

Panaji, 22nd March, 2012 (Chaitra 2, 1934)

SERIES II No. 51

OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There are five Extraordinary issues to the Official Gazette, Series II No. 50 dated 15-3-2012 as follows:-

- 1) Extraordinary dated 19-3-2012 from pages 1331 to 1332 regarding Notification from Goa Legislature Secretariat.
- 2) Extraordinary (No. 2) dated 19-3-2012 from pages 1333 to 1334 regarding Notification from Department of General Administration
- 3) Extraordinary (No. 3) dated 20-3-2012 from pages 1335 to 1336 regarding Notification from Goa Legislature Secretariat.
- 4) Extraordinary (No. 4) dated 20-3-2012 from pages 1337 to 1340 regarding Order and Notification from Department of Elections (Goa State Election Commission).
- 5) Extraordinary (No. 5) dated 21-3-2012 from pages 1341 to 1342 regarding Notification from Department of General Administration.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Notification

No. 126/1/2005-MR/MKT/RCS

In pursuance of the sub-section (3) of Section 13 of the Goa Agricultural Produce Marketing (Development & Regulation) Act, 2007, the Government of the Goa hereby publishes the names of the elected/nominated members of the Goa Agricultural Marketing Board, Margao for the period from 2012 to 2017 for the purpose of said Act, as follows:

List of Elected/Nominated Members of the Goa Agricultural Marketing Board, Margao.

Sr. No.	Name of the elected/ /nominated member	Address	Constituency
1	2	3	4
1.	Asnodkar Ulhas Gopal	H. No. 597, Bhutki waddo, Socorro, Porvorim, Bardez-Goa	Bardez Taluka Agriculturist Constituency.
2.	Dessai Sunil Narayan	Khadpaband Post, Ponda-Goa	Tiswadi Taluka Agriculturist Constituency.
3.	Gaonkar Prabhakar Bhisso	Bendurdem, Balli-Goa	Salcete Taluka Agriculturist Constituency.
4.	Joshi Ashok Yadneshwar	Hedode, Post Valpoi, Satari-Goa	Satari Taluka Agriculturist Constituency.
5.	Kathane Hemant Durgaram	H. No. 225, Gothanwada Veling, Mardol-Goa	Ponda Taluka Agriculturist Constituency.
6.	Prabhu Nilesh Damodar	Dabal Post Kirlapal, via, Curchorem-Goa	Sanguem Taluka Agriculturist Constituency.
7.	Prabhu Vikas Vishwanath	H. No. 109, Chafegal, Nirankal, Ponda-Goa	Marmugao Taluka Agriculturist Constituency.
8.	Phalgaonkar Satish G.	H. No. 144, Nagarse, Canacona-Goa	Canacona Taluka Agriculturist Constituency.

1	2	3	4
9.	Sawaikar Ganpat Pandurang	Kolomb, Karapur Post, Sanquelim-Goa	Bicholim Taluka Agriculturist Constituency.
10.	Shet Mandrekar Kishor Shantaram	H. No. 134, Deulwada Mandre, Pedne-Goa	Pedne Taluka Agriculturist Constituency.
11.	Velip Narayan Kuiro	Khede, Padi, Cuncolim-Goa	Quepem Taluka Agriculturist Constituency.
12.	Sawaikar Shubhada Mohandas	Kolomb, Karapur Post, Sanquelim-Goa	North-Goa Female Agriculturist Constituency.
13.	Velip Ramita R.	Padi, Cuncolim-Goa	South-Goa Female Agriculturist Constituency.
14.	Sahakari Ajay Madhav	H. No. 205, Mestawada, Curti, Ponda-Goa	Trader's Constituency.
15.	Naik Narayan Satu	Chairman, The Goa Marketing & Supply Fede- ration Ltd., Sahakari Bhavan, Panaji-Goa	Elected U/s 12 (1) Clause (d).
16.	Asstt. Registrar (Marketing) Panaji from the office of the Registrar of Co-op. Societies, Panaji	O/o the Registrar of Co-op. Societies, Panaji-Goa	Nominated U/s 12 (1) Clause (e).
17.	Deputy Director of Agriculture (Hort.) from the Dept. of Agriculture	O/o the Dept. of Agriculture, Tonca, Caranzalem, Panaji-Goa	Nominated U/s 12 (1) Clause (e).
18.	President, Goa Cashew Manufacturers Association	C/o H. No. 47/E, Mestawada, Curti, Ponda- Goa	Nominated U/s 12 (1) Clause (f).

1	2	3	4
19. Secretary of the Goa Agricultural Marketing Board, Margao, Arlem-Raia, Salcete-Goa	O/o the Goa Agricultural Marketing Board, Margao, Arlem, Raia, Salcete-Goa	Nominated U/s 12 (1) Clause (g).	

By order and in the name of the Governor of Goa.

P. K. Velip Kankar, Registrar of Co-op. Societies.

Panaji, February, 2012.



Department of Education, Art & Culture

Directorate of Education

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Order

No. 1(5)-5/2008/SE/43

Read: Order No. 1(4)-1-2009/SE/221 dated 14-07-2009.

Government approval is hereby conveyed to Smt. Farrel Furtado, Vice-Chairperson of the Goa Board of Secondary and Higher Secondary Education, Alto-Betim to officiate as Chairperson in addition to her own duties until further orders.

By order and in the name of the Governor of Goa.

Anil V. Powar, Ex officio Joint Secretary (School Education).

Porvorim, 16th March, 2012.



Department of Finance

Finance (Rev. & Cont.)

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Order

No. 2/6/87-Fin(R&C)/Part-II

The ad hoc appointment of the following Officers to the post of Superintendent of Excise (Group 'B', Gazetted) in the Office of Commissioner of Excise, in the pay scale PB—2, ₹ 9,300-34,800+4,600 (G.P.) is extended further for the period indicated against their names or till the appointment is made on regular basis, whichever is earlier:

Sr. No.	Name	Ad hoc appointment extended upto
1.	Shri Narayan S. Nerurkar	26-02-2012 to 25-08-2012.
2.	Shri Shripad Talaulikar	26-02-2012 to 25-08-2012.
3.	Shri Piedade Fernandes	26-02-2012 to 25-08-2012.
4.	Shri Milagres Soares (ST)	26-02-2012 to 25-08-2012.

This issues with the approval of Government vide U.O. No. 1450930/F dated 30-01-2012.

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary, Finance (R & C).
Porvorim, 27th February, 2012.

Order

No. 2/6/87-Fin(R&C)/Part-II

The ad hoc appointment of Shri Anant V. Naik, post of Superintendent of Excise (Group 'B' Gazetted) in the office of the Commissioner of Excise in the pay scale PB—2, ₹ 9,300-34,800+4,600 (G.P.) is extended for a further period of six months i.e. from 28-03-2012 to 27-09-2012 or till the appointment is made on regular basis, whichever is earlier.

This issues with the approval of Government vide U. O. No. 1450930/F dated 30-01-2012.

By order and in the name of the Governor of Goa.

Ajit Pawaskar, Under Secretary, Finance (R & C).
Porvorim, 16th March, 2012.

Department of General Administration

Order

No. 13/8/2010/GAD-III/6827

Smt. Smita Hede, Section Officer (ARD), shall look after the work of Section Officer (Home—General) with immediate effect, in addition to her own duties during leave period of Smt. Brenda Maciel, Section Officer.

This issues with the approval of Secretary (GA).

Gurudas P. Pilarnekar, Joint Secretary (GA).

Porvorim, 20th February, 2012.

Notification

No. 1/11/2012-GAD-II

Government of Goa regret to announce that Shri Matanhy Saldanha, Hon'ble Minister for Tourism, Forest & Environment passed away on 21-03-2012. As a mark of respect to the departed soul the Government of Goa has decided that on 21-03-2012 the National Flag will be flown at Half Mast in the buildings where it is flown regularly in Panaji.

Government of Goa declares State Mourning for a period of three days from 21-03-2012 to 23-03-2012, throughout the State of Goa and there will be no official entertainment/programmes during State mourning.

By order and in the name of the Governor of Goa.

Ajit Pawaskar, Under Secretary (GA-II).

Porvorim, 21st March, 2012.

Department of Home

Office of the Director General of Police

Order

No. E-I(A)/Deput/2nd IRB/2211/2012

Read: 1. Letter No. E-16015/2/Misc-Deput/2007/
/Estt-II/4265 dated 27-12-2011.

2. Joining Report dated 12-01-2012,
20-01-2012 & 23-01-2012.

In pursuance to above, the following Head Constables of Border Security Force, New Delhi are transferred on deputation basis to 2nd India Reserve Battalion, Goa for appointment as Head Constable in the pay scale of ₹ 5,200-20,200/- G.P. ₹ 2,000/- plus allowances as admissible under the rules. The terms of deputation shall be initially for a period of three years:

1. Shri Ebby John, CISF No. 864502861, Head Constable/GD.
2. Shri R. Sundara Ranjan, CISF No. 884492696, Head Constable/GD.
3. Shri P. K. Gangadharan, CISF No. 854504806 Head Constable/GD.

2. Their appointment shall be governed by standard terms of deputation as contained in office Memorandum No. 13/4/74-PER dated 12-09-1999 as amended under DOP&T OM No. 618/2009-Estt.(Pay II) dated 17th June, 2010 and as amended from time to time.

3. This issues with the approval of DGP, Goa.

S. M. Prabhudessai, Superintendent of Police (HQ).

Panaji, 19th March, 2012.

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Department of Industries

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Notification

No. 11/7/2010-IND

Read: Proclamation No. 11/7/2010-IND dated 27-01-2011, published in the Official Gazette, Series I No. 45 dated 03-02-2011.

Whereas vide Proclamation No. 11/7/2010-IND dated 27-01-2011, published in the Official Gazette, Series I No. 45 dated 03-02-2011 and local newspapers, namely, "Herald" and "Tarun Bharat" both dated 30-01-2011 (hereinafter referred to as the "said Proclamation"), the Government of Goa had published its proposal to declare certain additional industrial area as specified in the Schedule to the said Proclamation (hereinafter referred to as the "said area"), to be notified area and to declare that the provisions of any law relating to local authorities providing for control or erection of buildings, levy and collection of taxes, fees and other dues to the local authorities, which is in force in the said area, shall cease to apply thereof and that the Municipalities and the Village Panchayats which were receiving house tax from the occupants of the said area, under their respective laws, shall be compensated by the Government to the extent of the last financial year's collection of taxes, for a period of five years, in terms of clauses (a) and (c) respectively, of sub-section (1) of Section 37 A of the Goa Industrial Development Act, 1965 (Act 22 of 1965) (hereinafter referred to as the "said Act");

And whereas, the Government of Goa vide said Proclamation also proposed to appoint the Goa Industrial Development Corporation (hereinafter called the "said Corporation") for the purpose of the assessment and recovery of any taxes as per the provisions of law as in force and to authorize the said Corporation for the purpose of exercising all the powers, such as, control or erection of building, levy and collection of taxes, fees and other dues in respect of local authorities which are in force in the said area, in terms of clauses (b) and (d) of sub-section (1) of Section 37 A of the said Act; and that house tax, other taxes, fees and all other types of dues so collected by the said Corporation in respect of said area, shall be deposited with the

Government immediately by the said Corporation after such collection under the Budget Head:-

0851 – Village and Small Industries.

101 – Industrial Estates.

02 – Collection of House Tax from the occupants of the Industrial Estates.

[hereinafter collectively called as the "said proposals"];

And whereas in pursuance of sub-section (2) of Section 37 A of the said Act, the Government of Goa, vide said Proclamation, invited all persons who entertain any objections to the said proposals to submit the same in writing with reasons therefor to the Director of Industries, Trade and Commerce, Government of Goa, Panaji, within two months from the date of publication of the said Proclamation in the Official Gazette;

And whereas the said Official Gazette was made available to the public on 03-02-2011;

And whereas no objections have been received by the Director of Industries, Trade and Commerce, Panaji, on the said proposals within the said period of two months.

Now, therefore, in exercise of the powers conferred by clauses (a) and (c) of sub-section (1) of Section 37 A of the said Act, the Government of Goa is hereby pleased to declare certain additional industrial area as specified in the Schedule to the said Proclamation which is also specified in the Schedule hereinbelow to be notified area and also declare that the provisions of any law relating to local authorities providing for control or erection of buildings, levy and collection of taxes, fees and other dues to the local authorities which is in force in the said area shall cease to apply thereof and that the Municipalities and the Village Panchayats, which were receiving house tax from the occupants of the said area under their respective laws, shall be compensated by the Government to the extent of the last financial year's collection of taxes for a period of five years.

Also, in exercise of the powers conferred by clauses (b) and (d) of sub-section (1) of Section 37 A of the said Act, the Government of Goa is pleased to appoint the said Corporation for the purpose of the assessment and recovery of any taxes as per the provisions of law as in force and authorize the said Corporation for the purpose of exercising all the powers, such as, control or erection of building, levy and collection of taxes, fees and other dues in respect of local authorities which are in force in the said area and further directs that the house tax,

other taxes, fees and all other types of dues so collected by the said Corporation in respect of said area shall be deposited with the Government immediately by the said Corporation after such collection under the following Budget Head:-

0851 – Village and Small Industries.

101 – Industrial Estates.

02 – Collection of House Tax from the occupants of the Industrial Estates;

SCHEDULE

Sancoale Industrial Estate Phase IV A.

- (a) Area of land : 9,250m²
 (b) Village : Sancoale.
 (c) Taluka : Mormugao.
 (d) Survey Nos. : 181/part.
 (e) Boundaries :
 North : Survey No. 181/1.
 South : Road.
 East : Survey No. 181/1.
 West : Survey No. 181/1.

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Industries).

Porvorim, 16th March, 2012.

Department of Labour

Order

No. 28/34/2011-LAB/95

Whereas the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Putzmeister India Private Limited, Kundaim Industrial Estate, Kundaim, Goa and it's Workmen, represented by the Gomantak Mazdoor Sangh, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Industrial Tribunal of Goa at Panaji-Goa, constituted under Section 7-A of the said Act.

SCHEDULE

"(1) Whether M/s. A. P. Enterprises is a sham contractor?

(2) If the answer to issue No. (1) is in the affirmative, then, whether the following employees can be treated as direct employees?

Sr. No.	Name of the Workmen	Designation
1	2	3
1)	Shri Deepak M. Tendolkar	Hydraulic Fitter.
2)	Shri Durgadas D. Gawade	Hydraulic Fitter.
3)	Shri Ajay Gawade	Hydraulic Fitter.
4)	Shri Pratap C. Naik	Forklift Driver.
5)	Shri Appaji A. Naik	Helper.
6)	Shri Subhash Y. Mirashi	Helper.
7)	Shri Ranjit P. Sharma	Welder.
8)	Shri Thanu S. Kurtikar	Helper.
9)	Shri Soumitra R. Bobhate	Helper.
10)	Shri Narayan C. Rawool	Store Helper.

(3) If the answer to issue No. (2) is in the affirmative, then, whether the above mentioned workmen are entitled for reinstatement with full back wages and continuity in services?

(4) If the answer to issue No. (3) is in the negative, then, to what relief the workmen are entitled?"

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 15th February, 2012.

Notification

No. 28/1/2012-LAB/119

The following award passed by the Labour Court-II, at Panaji-Goa on 22-12-2011 in reference No. IT/4/04 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 14th March, 2012.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/4/04

Shri Manjoor Mankandar,
Rep. by the General Secretary,
Goa Trade & Commercial Workers Union,
Velhos Bldg., 2nd Floor,
Opp. Municipal Garden,
Panaji-Goa.

... Workman/Party I

V/s

M/s. Beiersdorf India Pvt. Ltd.,
Nirankal Road, Curti,
Ponda-Goa.

... Employer/Party II

Workman/Party I represented by Adv. Shri Suhas
Naik.

Employer/Party II represented by Adv. Shri P.
Chawdikar.

Panaji, dated: 22-12-2011.

AWARD

1. In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 29-12-2003, bearing No. 28/49/2003-LAB/1029, referred the following dispute for adjudication by Industrial Tribunal of Goa.

"(1) Whether the action of the Management of M/s. Beiersdorf India Pvt. Ltd., Nirankal Road, Curti, Ponda-Goa in refusing the employment to Shri Manjoor Mankandar, Production Officer, with effect from 28-04-2003, is legal and justified?

(2) If not, what relief, the Workman is entitled to?"

2. On receipt of the reference, a case was registered under No. IT/04/2004 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short 'Workman'), filed his statement of claim on 05-02-2004 at Exb. 4. The facts of the case in brief as pleaded by the Workman are that the Employer is a factory engaged in the process of manufacturing surgical products. The Workman stated that he was initially appointed as 'Trainee Chemist' by the Employer on 26-12-1991 and worked in the said post for the period starting from 26-12-1991 till 25-12-1992 on a stipend of ₹ 1, 500/- p. m. He stated that he was subsequently placed as a probationer to the post of 'Production Chemist' for the period

of six months vide order of the Employer dated 26-12-1992. He stated that by another order dated 24-07-1993, his service was confirmed in the said post of 'Production Chemist' in Grade S-II w.e.f. 26-06-1993. He stated that as a 'Production Chemist', he was working under the Production Manager of the Employer who used to allow him day-to-day duties and was personally supervising day-to-day work in Production Department. He stated that he was thereafter promoted to the post of 'Production Officer' in Grade O-III w.e.f. 01-07-1995. He stated that he was also made eligible for bonus as per the provisions of Payment of Bonus Act, Provident Fund & Gratuity. He stated that he was also paid overtime as and when he was performing the work on extended hours of work alongwith other workmen. The Workman submitted that his service was transferrable to any of the affiliated, subsidiary or sister concerns of the Employer. He stated that as a 'Production Officer' he was predominantly performing the duties such as checking and weighing of the raw materials, checking and testing the bandages, checking the humidity, maintaining the batch cards and writing the daily reports etc. He stated that the Production Executive was allotting to him and other staff the day-to-day work. He stated that the said Production Executive was acting and functioning as per the instruction of the Production Manager. He stated that on 28-04-2003, he was issued a termination letter, terminating his services with immediate effect. He stated that the said termination letter was duly signed by Shri Anastasio Colaco alleging that he was in the management cadre and his behaviour was insolvent, abusive and indiscipline. He stated that in the said termination letter issued to him, it was also alleged that he was counselled and warned in the past to change his behaviour. He stated that it is also alleged in the said letter that on 24-04-2003 he insulted the superior Mr. P. Matha and on 25-04-2003 the HR-Manager Mr. A. Colaco in the presence of Shri P. Matha and that after the aforesaid incident he was called in the cabin by the HR-Manager through a message sent through Mr. Savio Amaral and Mr. P. Matha, but he refused to meet the HR-Manager. He submitted that though the Employer made serious allegations against him, no enquiry or investigation of whatsoever nature was conducted. He submitted that the termination of his services is illegal, unjustified and bad-in-law. He stated that he has not been paid any amount as alleged in the said letter dated 28-04-2003, but was paid his earned salary for the month of April, 2003. He submitted that the termination letter dated 24-04-2003 signed by Mr. Anastasio Colaco is illegal, without any authority and locus standi as the said Mr. A. Colaco did not have any authority to sign the termination letter.

3. He stated that being aggrieved by the decision of the Employer, he approached the General Secretary, Goa Trade & Commercial Workers Union with a request to raise an Industrial Dispute pertaining to his illegal termination of service by the Employer. He stated that accordingly, the General Secretary, Goa Trade & Commercial Workers Union raised a dispute before the Assistant Labour Commissioner, Ponda-Goa on 28-05-2003 which ended in failure. The Workman therefore prayed that the action of the Employer in terminating his service w.e.f. 28-04-2003 be held as illegal, unjustified and bad-in-law and direct the Employer to re-instate him back in services with full back wages and continuity in service alongwith all other benefits. The Workman also prayed for monitory compensation for having suffered mental agony.

4. The Employer Company filed its written statement on 09-06-2004 at Exhibit-S. The Employer Company controverted the claim of the Workman preliminarily on the ground that the Party I was employed as a "Production Officer" in Officer's Grade-II of the Management and is not a 'Workman' as defined u/s 2 (s) of the I. D. Act, 1947. The Employer submits that the Party I was predominantly performing the duties of supervisory, managerial & administrative in nature. The Employer however admits that the Party I was initially employed as a 'Trainee Chemist' and on completion of his training period he was placed on probation for a period of six months from 26-12-1992 & designated as 'Production Chemist'. The Employer stated that the Party I worked as a 'Production Chemist' from the year 1993 till 1993 after completion of his probationary period.

5. The Employer stated that as a 'Production Chemist', the Party I was supervising the work of operators, helpers, attendants and packers. The Employer stated that the Party I was recommending leave of the Workmen subordinate to him. The Employer stated that the shift Schedule of the workers like operators, helpers, attendants and packers etc. was prepared by the Production Executive in consultation with the Production Officer/Chemist. The Employer stated that the Production Chemist headed each shift and he was incharge of the second shift. The Employer stated that the Workmen could leave the factory after the permission was granted by the Production Chemist and after consultation with the Production Officer if such eventuality occurred in the second shift. The Employer stated that the Production Chemist in charge of the shift was responsible for attending to any emergency that may occur during the work of the said shift. The Employer stated that the Production Chemist recommended engagement of the Workmen on overtime when in general shift, but in the second shift as to who should be placed

on overtime was within the exclusive jurisdiction of the Production Chemist.

6. The Employer stated that the Party I was promoted as Production Officer w.e.f. 01-07-1995. The Employer stated that as a Production Officer, he was placed in Grade-III and the total emoluments drawn by him at the time of his termination was ₹ 12,845/- p.m. The Employer stated that as a Production Officer, the Party I was predominantly performing the duties such as allocation of work to Workmen working under him, supervision of production activities, sanctioning of leave to Workmen working under him and being independent shift incharge where all the activities of shift were carried out under his control. The Employer stated that the Party I was approved as an Expert Staff in Plaster of Paris in Bandage manufacturing section by the Director of Food and Drugs Administration. The Employer stated that the Party I was eligible for bonus, Provident Fund and gratuity as per its policy. The Employer stated that the checking and weighing of raw materials is the duty performed by helpers/attendants under the supervision of Store Assistant/Officer and Production Officer/Production Chemist and random checking of the humidity is the duty performed by Production Officer/Chemist as per FDA regulations. The Employer stated that in process testing of bandage is the duty performed by Production Officer/Chemist which is to test the setting time, granular feel, GSM of bandages once for every mother roll coated. The Operator cuts a piece of 2.75 mtrs length by 10/15 cms. width from the mother roll which is of size 350 mtrs length and 1.25 mtres width, rolls it up and hands it over to the Production Officer/Chemist to do the inprocess testing. The Employer stated that it was the duty of the Production Officer to maintain daily records of the supervisory work performed by him which includes the recommendations made by him with respect to the nature of work performed by various employees working under him, the suggestions made with respect to nature of operations and comments up on the quality etc.

7. The Employer stated that the Party I was insolent, abusive and indisciplined. The Employer stated that the Party I was counseled and warned in the past and that there was no improvement in his behaviour. The Employer stated that on 24-04-2003 the Party I insulted the H. R. Manager, Mr. A. Colaco in the presence of Mr. Matha. The Employer stated that the Party I was called in the H. R. Manager's Cabin and a message was conveyed to him by Mr. Savio Amaral and Mr. Matha, however the Party I ignored the said instructions. The Employer stated that by letter dated 28-04-2003 it has terminated the services of the Party I as per Clause 16 of his Appointment

Letter by referring the aforesaid act of the Party I and he was offered all his legal dues. The Employer submits that the services of the Party I were terminated in terms of the contract. The Employer submits that since the Party I is not a 'Workman' as defined under the I. D. Act, 1947, the question of conducting any enquiry into the misconduct does not arise. The Employer submitted that Mr. Colaco, H. R. D. Manager is the Head of the Department and is the appointing authority of the employee in the cadre and is competent to issue the letter of termination. The Employer stated that the Party I is presently gainfully employed and has a roaring business of supply of centering plates for construction activities. The Employer submits that the termination of service of the Party I is legal, proper and justified and the Party I is not entitled to any relief. The Employer therefore prayed for rejection of the claim of the Party I.

8. Thereafter, the Workman filed his re-joinder on 09-06-2004 at Exb. 6. The Workman by way of his re-joinder reiterates and confirms all the submissions and averments made by him in his claim statement to be true and correct and denies all the statements and averments made by the Employer in its written statement which are contrary and inconsistent with the statements and averments made by him. The Party I submits that the very fact that he was covered for the purpose of coverage under the acts like bonus, gratuity and Provident Fund indicates that he was performing the work of 'Workman' as defined u/s 2 (s) of the I. D. Act, 1947.

9. Based on the pleadings of the respective parties filed in the present proceedings, the Hon'ble Industrial Tribunal framed the following issues at Exb. 07 on 01-07-2004.

1. *Whether the Party I proves that the action of the Party II in terminating his services by refusing employment to him w.e.f. 28-04-2003 is illegal and unjustified?*
2. *Whether the Party II proves that the Party I is not a "Workman" as defined u/s 2 (s) of the I. D. Act, 1947?*
3. *Whether the Party I is entitled to any relief?*
4. *What Award?*

17. My answers to the aforesaid issues are as under:

Issue No. 1	Does not arise.
Issue No. 2	In the affirmative.
Issue No. 3	In the negative.
Issue No. 4	As per final order.

REASONS

Issue No. 2:

18. I am deciding the Issue No. 2 first prior to the Issue No. 1 as it touches upon the very root jurisdiction of this Court to adjudicate the present Order of Reference issued by the Govt. of Goa.

I have heard the arguments of Ld. advocates appearing for the respective parties.

19. Ld. Adv. Shri Suhas Naik representing the Workman during the course of his oral arguments submitted that it is the well settled principle of law that whether a particular employee is a 'Workman' or not as defined u/s 2 (s) of the I. D. Act, 1947 depends upon his predominant nature of duties performed by him at the time of termination of his services, irrespective of his designation and grades. He submits that admittedly, the Party I was designated as 'Production Officer' w.e.f. 01-07-1995 and had performed his duties as 'Production Officer' till he was terminated from service w.e.f. 28-04-2003. He submitted that the Party I was made eligible for bonus under the payment of Bonus Act, Provident Fund and Gratuity. He submitted that the Party I was also paid overtime wages for the extended hours of work performed by him alongwith other Workmen of the Employer. He submitted that the Party I was predominantly performing the duties such as checking and weighing of the raw materials, checking and testing the bandages, checking the humidity, maintaining the batch cards and writing the daily reports etc. He submitted that the Employers first witness Shri Pradip Matha in his cross-examination clearly admits that the "Production Manager used to set the production target as well as the production norms to his subordinates. He also stated that he used to visit the plant to observe and supervise the execution of the production target given to his subordinates and if any irregularities noticed by him pertaining to the proper functioning of the work, he used to give instructions to the Production Officer/Chemist to correct the same. He submits that though the Employer contended that the Party I was allotting the work to the Workmen working under him and being independent shift incharge where all activities of shift were carried out under his control, however failed to produce any cogent evidence in the form of documents. He submits that on the contrary, the Employer's first witness in his cross-examination clearly admits that he used to visit the plant where the actual production was going on and check and verify the full functioning

of the work. The aforesaid deposition of the Employer's first witness, Shri Pradeep Matha clearly proves that the Party I was not an independent in-charge of any shift. He relied upon two decisions of Hon'ble Supreme Court of India, one in the case of **National Engineering Industries Ltd. v/s Kishan Bhageria** reported in AIR 1988 SC 329 and another **S. K. Verma v/s Mahesh Chandra and Anr.** reported in 1983 4 SCC 214.

20. On the contrary, Ld. Adv. Shri P. Chawdikar representing the Employer during the course of his oral arguments submitted that at the time of termination of services of the Party I, he was designated as 'Production Officer' and drawing a salary of ₹ 12,845/- p.m. He submitted that as a 'Production Officer' the duties performed by him were predominantly of supervisory, administrative and managerial in nature. He submitted that the Party I was approved as an expert employee in Plaster of Paris, Bandage Manufacturing Section by the Directorate of Food and Drugs Administration Department. He submitted that the Party I was predominantly performing the duties such as allocation of work to Workmen working under him, supervision of production activities, sanctioning of leave to Workmen working under him and being independent shift incharge where all the activities of shift were carried out under his control amongst other duties. He submitted that the leave applications of the Workmen working under his supervision which are on record at Exb. E/3, Exb. E/4 & Exb. E/5 clearly established that the Party I was the leave sanctioning authority of the Workmen working under him. He submitted that the shift notice dated 31-03-2000 and dated 19-04-2001 which are on record at Exb. E/6-Colly clearly established that the Party I was supervising the shifts. He therefore submitted that the Party I being the Production Officer was primarily performing the duties of supervisory, administrative and managerial in nature and hence he is not a 'Workman' as defined u/s 2 (s) of the I. D. Act, 1947. He relied upon the series of decisions of Hon'ble Supreme Court of India as well as various Hon'ble High Courts.

I have also carefully perused the records of the case. I have also considered the various oral submissions made by the Ld. Advocates for the respective parties.

21. Undisputedly, the Party I joined in the services of the Employer as a 'Trainee Chemist' w.e.f. 26-12-1991 and on completion of training period he was designated as 'Production Chemist' w.e.f. 26-12-1992. The Party I was thereafter

confirmed in the said post of 'Production Chemist' after successfully completion of his probation period w.e.f. 24-07-1993. The Party I was promoted to the post of 'Production Officer' w.e.f. 01-07-1995 and terminated his services vide letter of the Employer dated 28-04-2003. Admittedly, at the time of termination of services of the Party I he was designated as 'Production Officer' and was drawing a total emoluments of ₹ 12,845/- p.m.

22. Since the Employer disputed the status of the Party I as 'Workman' within the meaning of section 2(s) of the I. D. Act, 1947, it is necessary to refer the provisions of section 2(s) of the I. D. Act, 1947 which defines the term "Workman" and it reads as under.

Section 2 (s), 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has laid to that dispute, but does not include any such person.

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding ₹ 1,600/- per mensem or exercises either by the nature of the duties attached to the Office or by reason of the powers vested in him, functions mainly of a managerial nature.*

Thus, in order to prove that the Party I is/was a "Workman" as defined u/s 2(s) of the I. D. Act, 1947, one has to prove that he was performing the duties of manual, unskilled, skilled, technical, operational, clerical or supervisory work and it is not enough that he/she was not performing the duties of supervisory, administrative and managerial in nature.

23. It is the settled principles of industrial jurisprudence that whether a particular employee is a "Workman" or not, as defined under section 2(s) of the Industrial Disputes Act, 1947 depends

upon the predominant nature of duties and responsibilities performed by him at the time of termination of his services. It is the contention of the Employer that the primary duties & responsibilities attached to the post of Production Officer are supervisory, managerial & administrative in nature and hence the Party I is not a 'Workman' as defined u/s 2 (s) of the I. D. Act, 1947. The Employer contended that as a Production Officer, the Party I was predominantly performing the duties such as allocation of work to Workmen working under him supervision of production activities, sanctioning of leave to Workmen working under him and being an independent shift incharge where all the activities of shift were carried out under his control and that the Party I was an approved expert staff in Plaster of Paris, Bandage Manufacturing Section. The Employer in order to prove its aforesaid contention examined Shri Pradeep Matha, its Plant Manager and Shri Anastasio Colaco Manager, HRD. The Employer also produced on record certain documentary evidence in support of its aforesaid contention. On the contrary, the Party I contended that he was primarily doing the work such as checking and weighing of the raw materials, checking and testing the bandages, checking the humidity, maintaining the batch cards and writing the daily reports etc. The Party I examined himself as his sole witness.

24. Both the Employer's witnesses namely, Shri Pradeep Matha, the Production Manager as well as Shri Anastasio Colaco, the then Manager-HRD in their respective Affidavit-in-Evidence on record, disclosed certain duties of the Party I which he was performing as a "Production Chemist". However, the said duties performed by the Party I as a "Production Chemist" are irrelevant while deciding the present issue No. 2 as the Party I at the time of termination of his service was designated as "Production Officer" and not "Production Chemist". Both the said Employer's witnesses also disclosed in their Affidavit-in-Evidence, the duties performed by the Party I as a "Production Officer" such as allocation of work to the Workmen working under him, supervising of production activities, sanctioning leave to the Workmen working under him and was approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section of the Employer Company by the Director, Food and Drugs Administration, Panaji-Goa. Both the said witnesses of the Employer also disclosed that the Party I was eligible for Bonus, Provident Fund and Gratuity as per the policy of the Employer to extend the benefit of

such Act to all its employees irrespective of their status, nature of duties and functions or designation. They disclosed that in the case of supervisory and managerial cadre, the bonus was not paid under the Payment of Bonus Act, but the said amount was paid as an ex-gratia.

25. The first witness of the Employer, Shri Pradeep Matha, however in his cross-examination deposed that the role of the Deputy General Manager of the Employer was to observe the overall smooth functioning of the plant. He deposed that the Production Manager used to set the production target as well as production norms to its subordinates. He deposed that he used to visit the plant of the Employer where the actual production work were in functioning to observe and supervise the production target given to his subordinates and if found any irregularities pertaining to the proper functioning of the work, he used to give instructions to the Production Chemist as well as Production Officer to correct the same by calling him and did not directly contact the concerned Workman who was found doing mistakes/irregularities. The aforesaid statement of the Employer's witness disclosed that it is the responsibility of the Production Chemist/Production Officer to achieve the production target as per production norms with the help of manpower and raw-materials furnished to him.

26. The Employer's second witness, Shri Anastasio Colaco in his cross-examination disclosed that he joined in the services of the Employer in the year 2001 as a Manager-HR. He disclosed that he was not involved in day to day production of the Employer Company at the shop floor. As an HR-Manager, he was performing duties such as framing policies of the company on Human Resources and ensuring statutory compliances of various labour legislations, recruitment, appointment, industrial relationship and negotiation etc. He disclosed that the 'Production Manager' was the overall production head of the production and he was answerable to the General Manager. He disclosed that he do not know anything about the process involved in the production of Plaster of Paris Bandages. The aforesaid statement of the Employer's second witness, Shri Anastasio Colaco on record indicates that the said witness was ignorant about the process involved in the production of Plaster of Paris Bandages in which the Party I was working at the relevant time.

27. The Employer has also produced on record certain documentary evidence in support of its oral evidence. A letter of Directorate of Food & Drugs

Administration, Panaji-Goa dated 14-08-1995 issued to the Employer Company on record at Exb. E/2 as well as the oral evidence of the Employer on record indicates that the Party I after having interviewed by the authorities of the Directorate of Food and Drugs Administration has been approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section and the educational qualification of the Party I is shown as B.Sc. Thus, the Party I was working as an expert employee of the Employer Company working in Plaster of Paris Bandage Manufacturing Company. The Employer has also produced on record leave applications of its workmen working under the supervision of the Party I namely, Shri Arun Kale, Shri Deepak Nadkarni & Shri Philip Colaco which are on record at Exb. E/3, Exb. E/4 & Exb. E/5 respectively. The said oral as well as documentary evidence on record indicates that the Party I has sanctioned the leave applied by the aforesaid Workmen on various occasions. The Employer has also produced on record two shift notices one dated 31-3-2000 and another dated 19-4-2001 which are on record at Exb. E/6-Colly. The Party I also admits that the Employer used to put on its notice board the said notice shift. The said shift notices as well as the oral evidence adduced by the Employer on record indicates that the Party I was supervising the workmen working in the said particular shift. The Employer has also produced on record batch production record at Exb. E/7-Colly. The Party I admitted of having duly signed the said batch production record on record at Exb. E/7-Colly as an Production Officer/Competent Technical Staff, approved licensing authority during the course of his cross examination. The said batch production record on record at Exb. E/7-Colly indicates that the Party I has prepared the said record of entire process of production of Plaster of Paris Bandage which includes weighing and mixing operation of raw-materials (quality as well as quantity) and, environmental control, report of impregnation and slitting operation etc. The said batch production record at Exb. E/7-Colly indicates the duties such as checking and weighing of the raw materials, checking and testing the bandages, checking the humidity, maintaining the batch cards and writing the daily reports etc. were performed by the Party I as a Production Officer of the Employer in his supervisory capacity.

28. The Party I in his oral evidence on record also disclosed certain other duties alleged to have been performed by him such as when he was working in packing section, he was receiving shipper packs

which he used to open the same and make boxes. He disclosed that he used to label boxes according to materials, used to perform the work of cartoon coding on the boxes which consists of the date of manufacturing, price and batch number, used to arrange the bandages in the plastic crates batch wise, used to bring materials from store section as per the instructions from Production Executive, used to make adjustment of spooling machines and auto pack machines for taking productions and also doing minor maintenance of the said machines. He also disclosed that when he was working in Rapidur Section as a Production Officer, he used to change the solvent tanks every four days, used to open the valves and clean the same and fit it again, was adjusting the pressure of the pump manually, was adjusting the work of coating machine, was checking the process of bandage, checking of plaster weight, checking of leno gauge, controlling the temperature as required for coating, work of assembling and adjustment of the slitting machines etc. The Party I has however neither pleaded the said duties in his pleadings on record nor produced any cogent evidence in support of his oral evidence, though denied by the Employer of having performed the said duties. Thus, in the absence of any cogent evidence it cannot be said that the Party I was performing the aforesaid additional duties as a Production Officer.

29. Thus, from the entire oral as well as documentary evidence on record indicates that the Party-I being the "Production Officer" was predominantly made responsible for allocating the work to the workmen working under his supervision. The Party I was the immediate superior of Operators, Packers, Attendants and Packers etc. and was supervising the Workmen working in his shift to achieve the production target as well as the production norms as per the instructions of his superior. The Party I used to sanction the leave of the Workmen working under his shifts. The Party I was B. Sc. graduate in Chemistry as principal subject. The Party I had been approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section of the Employer Company after having been interviewed by the Director, Food and Drugs Administration, Panaji-Goa. The Party I used to check and weigh the raw materials with the help of Operators and Helpers, used to check and test the bandages, used to check the humidity, used to maintain batch cards and write the daily reports. Admittedly, the Party I was drawing a salary of ₹ 12,845/- per month at the time of termination of his service.

The aforesaid duties performed by the Party I are clearly of supervisory in nature and was drawing a salary of ₹ 12,845/- per month.

30. It is the contention of the Party I that he was made eligible for Bonus, Provident Fund and Gratuity. The payment of Provident Fund as well as Gratuity under the respective provisions of the Provident Funds Act as well as the Payment of Gratuity Act is applicable to the non-Workmen category also. Similarly bonus paid to the Employees under the Payment of Bonus Act, does not mean that the concerned Employee is a 'Workman' as defined u/s 2 (s) of the I. D. Act, 1947. The Party I contended that he was made eligible for the overtime dues. The Party I however failed to produce on record any cogent evidence in support of its aforesaid oral contention. Hence I do not find any merits in the submission of Ld. Adv. Shri Suhas Naik appearing for the Party I that since the Party I was made eligible for Provident Fund, Gratuity, Bonus under the Payment of Bonus Act and overtime wages etc. the Party I is a "workman" within the meaning of section 2(s) of the I. D. Act, 1947.

31. Ld. Advocate Shri Suhas Naik during the course of his oral argument relied upon a decision of Hon'ble Supreme Court of India in the matter of **National Engineering Industries Ltd. v/s Shri Kishan Bhageria and others reported in 1988 LAB. I. C. 384**. In the said case before the Hon'ble Supreme Court of India, the employee was working as an 'Internal Auditor' on a monthly salary of ₹ 1,186.60 and his predominant duties were reporting and checking up on behalf of the Employer, but he had no independent right or authority to take decision and his decision did not bind the company. He was therefore held as "workman" within the meaning of Section 2(s) of the I. D. Act, 1947. However in the case in hand at the time of termination of service of the Party I, he was designated as Production Officer and was drawing a salary of ₹ 12,845/- p.m. The Part I was predominantly performing the duties such as allocation of work to the Workmen working under him, supervising of production activities, sanctioning leave to the Workmen, and was approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section of the Employer Company by the Director, Food and Drugs Administration, Panaji-Goa. Hence the aforesaid decision of Hon'ble Supreme Court of India is not applicable to the present case.

32. Ld. Advocate Shri Suhas Naik also relied upon a decision of Hon'ble Supreme Court of India

in the case of **S. K. Verma v/s Mahesh Chandra and Anr. reported (1983) 4 sec 214** wherein the Hon'ble Apex Court has held that a "Development Officer" is a "Workman" within the meaning of Section of 2(s) of the I. D. Act, 1947 by observing that he has no authority to bind the LIC in any way. He has no authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is expected to stimulate and inspire the agents to work, while exercising no administrative control over them. The agents are not his subordinate and in fact, he has no subordinate staff working under him. However in the case in hand the Party I was approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section of the employer company by the Director, Food and Drugs Administration, Panaji-Goa. The Party I as an Production Officer of the Employer Company used to supervise the Workmen under his shift and was made responsible to achieve production target and production norms as per the instructions of Production Manager. Hence the aforesaid decision is not applicable to the present case.

33. On the contrary Ld. Advocate Shri P. Chawdikar during the course of his oral argument relied upon the following decisions;

In the case of All India Reserve Bank Employees Association and **Anr. v/s Reserve Bank of India and Anr. reported in 1965 II LLJ 176**, the Hon'ble Supreme Court of India has held that *"the Workman, employed to do supervisory work drawing monthly emoluments of less than ₹ 500/- held competent to raise an industrial dispute in regard to their pay scale even if the pay-scale demanded by them goes beyond ₹ 500/- per month. The Hon'ble Court further observed that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless control, they cover an easily simple oversight and directions as manual work coupled with the power of inspection and Superintendence of the manual work of others."*

34. In the case of **Anand Regional Co-operative Oil Seeds Growers Union Ltd. v/s s Shaileshkumar Harshadbhai Shah reported in (2006) 6 SCC 548**, the Hon'ble Supreme Court of India has held that *"for determining the question as to whether a person employed in an industry is a "Workman" or not, not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations. The Hon'ble Supreme Court of India further held that the*

supervision contemplates directions and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs for the said purpose, it is necessary to prove that there were some persons working under him whose work was required to be supervised. Being in charge of the section alone and that too a small one and relating to quality control would not answer the test. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence".

35. In the case of **Burmah Shell Oil Storage and Distributing Co. of India Ltd. v/s The Burmah Shell Management Staff Association and Ors.** reported in **AIR 1971 SC 922**, the Hon'ble Supreme Court of India has held that "in determining the nature of employment of an employee and in holding that the Employer is employed to do supervisory work, took into consideration not only the work of supervision which he was carrying on in ensuring that the skilled and unskilled manual Workman employed under him were properly doing work of repairs, maintenance, servicing and fabricating etc. but also the fact that the Workman function under his control and directions that he allocated and reallocated work to them and that he initiated disciplinary proceedings etc. The Hon'ble Supreme Court further held that the exercise of such power is clearly a part of his supervisory duty."

36. In the case of **G. M. Pillai v/s A.P Lakhnikar, Judge, IIrd Labour Court and Ors.** reported in **1998 LLR 310** the Hon'ble High Court of Bombay has held that "the Petitioner who was working as Superintendent in Quality Control Department and was drawing a salary exceeding ₹ 1600/- p.m. was not a Workman as defined u/s 2 (s) of the I. D. Act, 1947."

37. In the case of **Apparao Basavannappa Manore v/s M/s. Wandleside National Conductors Ltd. and Ors.** reported in **1995 I LLJ 243**, the Hon'ble High Court of Bombay has held that "the Petitioner had been working in a supervisory capacity for an unbroken period of 12 years. The work entrusted to him for about 8 months in 1982 also cannot be said to be purely clerical work. It required inputs from the experience he gained in the supervisory capacity to analyze the data, identify material defects and suggest remedy. The court observed

that the said work is not clerical work and hence he is not workman within the meaning of Section 2(s) I. D. Act, 1947.

38. In the case of **Narsinha Anant Joshi v/s Century Shipping and Ors.** reported in **1994 II LLN 928** the Hon'ble High Court of Bombay has held that "the Petitioner was employed mainly in Administrative capacity and any clerical work done by him was only incidental to his employment in administrative capacity. Hence the Labour Court was justified holding that the Petitioner was not a "Workman".

39. In the case of **Ramesh s/o Ramrao Wase v/s the Commissioner, Revenue Division Amravati** reported in **1996 1 LLJ 55** the Hon'ble High Court of Bombay has held that "the status of a person as an employee cannot be decided merely on the basis of his designation. The Hon'ble High Court further held that it is popularly believed that in order to dub the work as a "Supervisory", the person concerned must have control over the subordinates and the person concerned should have the power to sanction leave, give promotions etc. which is only one of the facets of the supervisory work. That is not the be all and end all of the term "supervisory work" if the supervision is required to be made in some other different way, like over the quality of the work and over other aspects such as to see and examine whether the work is completed or not in satisfactory manner and in keeping with specifications, that also becomes the supervisory work, it is therefore clear that really speaking, none of the duties of the Petitioner are of technical nature, but are of supervisory in nature."

40. In the case of **Shri Vishnu P. Kamat v/s Presiding Officer, Industrial Tribunal, Panaji-Goa and Anr.** passed in **Writ Petition No. 167/1999** the Hon'ble High Court of Bombay has held that "the Petitioner was entrusted with duties of sanctioning of leave of operators, checking of productions, stoppage of machinery if the product was found not up to the mark etc. and that these duties are certainly of supervisory in nature."

41. In the case of **Somanath Tulshiram Galande v/s Presiding Officer, IInd Labour Court, Pune and Ors.** reported in 2008 (117) FLR 149, the Hon'ble High Court of Bombay has held that "the appellant had performed multifarious duties and most of his duties were supervisory and managerial. He had the power and capacity to take decisions, supervise work of others and was also responsible for quality control of the products being manufactured and hence he is not a "Workman" as defined under the I. D. Act, 1947."

42. In the case of **Srikant Vishnu Palvankar v/s Presiding Officer, 1st Labour Court and Anr.** reported in 1992 (II) LLJ 378, the Hon'ble High Court of Bombay has held that "*recommendation of grant of leave and make appraisal of Workmen working under him are one of the index of supervisory function.*"

43. In the case of **German Remedies Ltd. v/s Micheal Gabriel Lopes and Anr.** reported in 1999 (2) LLN 199, the Hon'ble High Court of Bombay has held that "*it cannot be said that unless an employee has a power to dismiss the persons recruited by him or unless he has power to settle the matters in Court or to take decisions on behalf of the Company, he cannot fall into the category of Supervisor.*"

44. In the case of **Union Carbide (India) Ltd. v/s Ramesh Kumbha and ors** reported in 1999 III LLJ 1489, the Hon'ble High Court of Bombay has held that, "*the respondent was employed as a "Supervisor" in electrical maintenance department. The predominant nature of his work was supervisory and not technical. He had power to recommend leave and authorize overtime work and overtime free meal. He enjoyed certain special privileges and benefits under the pension scheme and gratuity scheme framed by the Company. Therefore it has been held that he must be working in supervisory capacity u/s 2(s) (IV) of the I. D. Act and merely because sometimes he carried out the work himself does not detract from the fact that he was a Supervisor.*"

45. In the case of **Umakant S. Deshapande v/s Gujarat Electricity Board**, reported in 2002 (I) LLJ 21, the Hon'ble High Court of Gujarat has held that "*the salary of the Accounts Officer always exceeded ₹ 1600/- p.m. from day one. The nature to duties of the Accounts Officer is such that they have to be excluded from the definition of the "Workman". The Ld. single judge has found that Accounts Officers are indisputably supervising the works of their subordinates and those carrying out the junctions of the financial wing at the division and sub-divisional level and are officers in Class I service. In view of all these, it cannot be said that Accounts Officers are "Workmen" coming within the definitions of Sec. 2(s) of the I. D. Act, 1947.*"

46. In the case of **Mamraj (Shri) v/s Management of M/s. Shanti Developers and Promoters (I) Ltd. and Anr.** reported in 2005 II CLR 487, the Hon'ble High Court of Delhi has held that "*the Petitioner was performing the supervisory duties as site Engineer, though he may have incidentally*

performed the duty of filling up the site registers. The dominant nature of his work being managerial and supervisory, even if the filling up of the registers was manual and clerical, it was only incidental to his managerial and supervisory capacity."

47. In the case of **Seraikella Glass Works Ltd v/s Second Industrial Tribunals W. B. and Ors.** reported in 1992 I LLJ 1158, the Hon'ble High Court of Calcutta has held that, "*the nature of duties performed by the employees is managerial and in carrying out the main duties as supervisor, he was required to do various jobs like assignment of work, allocation of job indenting of materials, recommendation of leave and work appraisal of the workmen working under him and was drawing a salary of ₹ 1600/- p.m. and such cannot prima facie the benefit of Workmen within a meaning of Section 2(s) of the I. D. Act, 1947.*"

48. Thus, from the aforesaid series of decisions as quoted above, the position emerged is that in determining the question as to whether a particular employee is a "Workman" or not within the meaning of Section 2 (s) of the I. D. Act, 1947, depends upon the predominant duties and responsibilities which he was performing at the time of termination of his service. Neither the designation of particular employee nor incidental duties performed by him are relevant while deciding the status of the employee.

36. In the case in hand, admittedly the Employer Company is a Surgical Company involved in the business of manufacturing of personal health care and wound care products such as Plaster of Paris, Bandages etc. Undisputedly the Party I was working as a "Production Officer" of the Employer w.e.f. 1-7-1995 till the date of termination of his service w.e.f. 28-4-2003 and was drawing a monthly salary of ₹ 12,845/-. The Party I was B. Sc. Graduate in Chemistry as principal subject. The Party I was duly approved as an expert staff in Plaster of Paris, Bandage Manufacturing Section of the Employer Company w.e.f. 14-8-1995 after having being interviewed by the Directorate of Food and Drugs Administration, Panaji-Goa. The Party I was supervising the Workmen working in his shift. Normally in a shift there were around 25 Workmen working in a shift. The Party I was sanctioning the leave of the Workmen working in his shift. The Party I used to allocate and distribute work to the Workmen working in his shift. The Party I being the "Production Officer" of the Employer was responsible for achieving the production target and production norms as per instructions given to him

by the Production Manager. The Party I was supervising all the production activities of shift through the Operators, Packers, Helpers and Attendants etc., working in his shift. The Party I used to prepare the batch production record. Thus the predominant nature of duties and responsibilities attached to the post of "Production Officer" which the Party I was performing were of supervisory in nature. The Party I was drawing a salary of ₹ 12,845/- p.m. at the time of termination of his services. Hence the Party I is not a "Workman" within the meaning of Sec. 2(s) of the I. D. Act, 1947. The Issue No. 2 is therefore answered in the affirmative.

Issue No. 1 & 3:

37. While deciding the issue No. 2 herein above, I have discussed and came to the conclusion that the Party I is not "workman" within the meaning of Section 2(s) of the I. D. Act, 1947. Hence the dispute as to whether the action of the management of M/s. Beiersdorf India Pvt. Ltd., Nirankal Road, Curti, Ponda-Goa in refusing the employment to Shri Manjoor Mankandar, Production Officer, with effect from 28-04-2003, is legal and justified, does not survive. The Party I is therefore not entitled to any relief under the I. D. Act, 1947.

In view of the above, I proceed to pass the following order

ORDER

1. It is held that Shri Manzoor Makandar, the Production Officer of M/s. Beiersdorf India Pvt. Ltd., Nirankal Road, Curti, Ponda-Goa, is not a "Workman" within the meaning of Section 2(s) of the I. D. Act, 1947.
2. It is held that the dispute as to whether the action of the management M/s. Beiersdorf India Pvt. Ltd., Nirankal Road, Curti, Ponda-Goa in refusing the employment to Shri Manjoor Mankandar, Production Officer, with effect from 28-04-2003, is legal and justified, does not survive,
3. The Party I, Shri Manzoor Mankandar is not entitled to any relief as claimed by him.
4. No order as to cost.
5. Inform the Government accordingly.

Sd/-

(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2012-LAB/117

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 09-01-2012 in reference No. IT/4/2011 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 13th March, 2012.

**IN THE INDUSTRIAL TRIBUNAL
AND LABOUR COURT
GOVERNMENT OF GOA AT PANAJI**

(Before Smt. Bimba K. Thaly, Hon'ble Presiding Officer)

Ref. No. IT/4/2011

Shri Anil P. Satarkar,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda-Goa. ... Workman/Party I
V/s

M/s. Interface Engineering Pvt. Ltd.,
5/D5, Kundaim Industrial Estate,
Kundaim, Goa. ... Employer/Party II

Party I/Workman represented by Shri P. Gaonkar.

Adv. Shri P. J. Kamat for Party II.

AWARD

(Passed on 9th day of January, 2012)

By order dated 12-1-2011, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication.

- "(1) Whether the action of the management of M/s. Interface Engineering Private Limited, Kundaim, Goa, in deducting four days wages of Shri Anil P. Satarkar, Helper, for the month of May, 2010, on the plea of non-submission of leave application, is legal and justified?
- (2) If the answer to issue No. (1) above is in the negative, then, what relief the Workman is entitled to?

(3) Whether the submission of the Gomantak Mazdoor Sangh that the management of M/s. Interface Engineering Private Limited Kundaim, Goa, have refused the earned wages to Shri Anil P. Satarkar, Helper for the entire month of May, 2010, is correct?

(4) If the answer to issued No. (3) above is in the affirmative, then, what relief the Workman is entitled to?"

2. On receipt of the reference, IT/4/2011 was registered. Notices were issued to both parties, pursuant to which the Party I/Workman appeared through Shri P. Gaonkar and Lnd. Adv. Shri P. J. Kamat appeared for Party II.

3. Party I filed statement of claim at Exb. 4 and Party II has filed the written statement at Exb. 5 Party I then filed rejoinder at Exb. 6. Issues were accordingly framed and same are at Exb. 10.

4. In the course of further proceedings and more particularly on 9-1-2012 Party I/Workman remained present before the Court with Shri P. Gaonkar where as Adv. Shri P. J. Kamat was present for Party II and on this day the parties placed on record the consent terms which are at Exb. 11.

5. The above consent terms are signed by Party I as well as his representative Shri P. Gaonkar so also by Shri Narendra Khandolkar, the factory in-charge of Party II and Shri P. J. Kamat the advocate for Party II. The terms are acceptable to both the parties and in my considered view are in the interest of the Workman. Hence, the terms at Exb. 10 are taken on record and consent award is drawn as per the consent terms which are as under:

1. It is agreed between the parties that the management of M/s. Interface Engineering Pvt. Ltd., Party II shall pay an amount of ₹ 3,300/- (Rupees Three thousand & three hundred only) towards earned wages of May, 2010 to Mr. Anil Satarkar, Party I in full settlement of his claim in Reference No. IT-4/11.
2. It is agreed between that parties that Mr. Anil Satarkar, Party I stands properly relieved from the services w.e.f. 27-08-2010.
3. It is agreed between the parties that Mr. Anil Satarkar, Party I shall be paid an amount of ₹ 66,600/- (Rupees Sixty six thousand & six hundred only) towards gratuity, notice wage, retrenchment compensation, leave encashment etc. in full & final settlement of all his legal dues arising out of his cessation of employment with the Party II and against the settlement of his demands in Reference No. IT-8/11.

4. It is agreed between the parties that on payment of total amount of ₹ 66,600/- (Rupees Sixty six thousand & six hundred only) as per clauses (1) and (3) above, the Party I, Mr. Anil Satarkar shall have no claim of whatsoever nature against the Party II and his disputes with the Party II are conclusively settled and that Party I shall not raise any disputes on the Party II on any issue.

5. It is agreed between the parties that the amount agreed hereinabove shall be paid within a week of filing of these terms before the Hon'ble Industrial Tribunal-cum-Labour Court, Panaji in Reference No. IT-4/11 and IT-8/11.

6. The dispute referred to this Tribunal by order dated 12-1-2011, is amicably settled as per the aforesaid terms.

Inform the Government accordingly.

Sd/-
(Bimba K. Thaly),
Presiding Officer,
Industrial Tribunal-
-cum-Labour Court-I.

Notification

No. 28/1/2012-LAB/118

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 09-01-2012 in reference No. IT/8/2011 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 13th March, 2012.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI

(Before Smt. Bimba K. Thaly, Hon'ble Presiding Officer)

Ref. No. IT/8/2011

Shri Anil P. Satarkar,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda-Goa.

... Workman/Party I

V/s

M/s. Interface Engineering Pvt. Ltd.,
5/D5, Kundaim Industrial Estate,
Kundaim, Goa. ... Employer/Party II

Party I/Workman represented by Shri P. Gaonkar.

Adv. Shri P. J. Kamat for Party II.

AWARD

(Passed on 9th day of January, 2012)

By order dated 11-5-2010/2011, the Government of Goa in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, has referred the following dispute for adjudication.

“(1) Whether the action of the management of M/s. Interface Engineering Private Limited, Kundaim, Goa, in terminating the services of Shri Anil P. Satarkar, Helper, with effect from 27-8-2010, is legal and justified?

(2) If not, what relief the Workman is entitled to?”

2. On receipt of the reference, IT/8/2011 was registered. Notices were issued to both parties, pursuant to which the Party I/Workman appeared through Shri P. Gaonkar and Lnd. Adv. Shri P. J. Kamat appeared for Party II.

3. Party I filed statement of claim at Exb. 5 and Party II has filed the written statement at Exb. 8. Party I then filed rejoinder at Exb. 9.

4. In the course of further proceedings and more particularly on 9-1-2012 Party I/Workman remained present before the Court with Shri P. Gaonkar where as Adv. Shri P. J. Kamat was present for Party II and on this day the parties placed on record the consent terms which are at Exb. 10.

5. The above consent terms are signed by Party I as well as his representative Shri P. Gaonkar so also by Shri Narendra Khandolkar, the factory in-charge of Party II and Shri P. J. Kamat the advocate for Party II. The terms are acceptable to both the parties and in my considered view are in the interest of the Workman. Hence, the terms at Exb. 10 are taken on record and consent award is drawn as per the consent terms which are as under:

1. It is agreed between the parties that the management of M/s. Interface Engineering Pvt. Ltd., Party II shall pay an amount of ₹ 3,300/- (Rupees Three thousand & three hundred only) towards earned wages of May, 2010 to Mr. Anil Satarkar, Party I in

full settlement of his claim in Reference No. IT-4/11.

2. It is agreed between that parties that Mr. Anil Satarkar, Party I stands properly relieved from the services w.e.f. 27-08-2010.
3. It is agreed between the parties that Mr. Anil Satarkar, Party I shall be paid an amount of ₹ 66,600/- (Rupees Sixty six thousand & six hundred only) towards gratuity, notice wage, retrenchment compensation, leave encashment etc. in full & final settlement of all his legal dues arising out of his cessation of employment with the Party II and against the settlement of his demands in Reference No. IT-8/11.
4. It is agreed between the parties that on payment of total amount of ₹ 66,600/- (Rupees Sixty six thousand & six hundred only) as per clauses (1) and (3) above, the Party I, Mr. Anil Satarkar shall have no claim of whatsoever nature against the Party II and his disputes with the Party II are conclusively settled and that Party I shall not raise any disputes on the Party II on any issue.
5. It is agreed between the parties that the amount agreed hereinabove shall be paid within a week of filing of these terms before the Hon'ble Industrial Tribunal-cum-Labour Court, Panaji in Reference No. IT-4/11 and IT-8/11.

6. The dispute referred to this Tribunal by order dated 11-5-2010/2011, is amicably settled as per the aforesaid terms.

Inform the Government accordingly.

Sd/-
(Bimba K. Thaly),
Presiding Officer,
Industrial Tribunal-
cum-Labour Court-I.

Notification

No. 28/1/2012-LAB/121

The following award passed by the Labour Court-II, at Panaji-Goa on 05-01-2012 in reference No. IT/12/06 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).
Porvorim, 14th March, 2012.

THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/12/06

Shri Mudkappa H. Gulabal & 5 others,
Rep. Gomantak Mazdoor Sangh,
Shetye Sankul, 3rd Floor,
Tisk, Ponda-Goa. ... Workmen/Party I
V/s

M/s. Hotel Leela Venture Ltd.,
The Leela Goa,
Cavellossim-Goa. ... Employer/Party II

Workmen/Party I represented by Adv. S. Gaonkar.

Employer/Party II represented by Adv. M. S.
Bandodkar.

Panaji, dated: 05-01-2012

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa, by Order dated 24-02-2006, bearing No. 28/12/2004-LAB/116 referred the following dispute for adjudication to this Labour Court-II of Goa.

“(1) Whether the action of the Management of M/s. Hotel Leela Venture Ltd., “the Leela Goa, Cavellossim-Goa, in terminating the services of its six Workmen, namely 1) Shri Mudkappa H. Gulabal, 2) Santan P. Rodrigues, 3) Mordhwaj M. Admane, 4) Shekar G. Naik, 5) Rajan G. Kotharkar, 6) Mosses A. Sermalai, with effect from 07-05-2005, is legal and justified?

(2) If not, to what relief the Workmen are entitled?”

2. On receipt of the reference, a case was registered under No. IT/12/2006 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short 'Union'), filed its statement of claim on 22-05-2007 at Exb. 4. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (for short “Employer”) is a Hotel Industry employing more than 650 workers in its Hotel. That it is a registered Trade Union of the Workmen employed in various industries in Goa. That the Workmen under reference joined to it vide their joining

letter dated 04-05-2005. That it has informed the Employer vide its letter dated 04-05-2005 about the said fact. That immediately upon the receipt of joining the Union, the Employer retrenched all the six Workmen with effect from 07-05-2005. That the Workman Shri Mudkappa H. Gulabal was initially appointed as “Security Guard” vide appointment letter of the Employer dated 12-02-1993 and was confirmed in service w.e.f. 12-08-1993. That he was transferred to Leisure Department as “Water Sports Operator” vide letter of the Employer dated 01-11-1998 and since then he was working in the said department till the date of his illegal retrenchment. That the Workman, Shri Santan P. Rodrigues was initially appointed as “Boat Club Attendant” vide appointment letter dated 01-07-1995 and subsequently promoted as “Water Sports Operator” w.e.f. 13-11-1998. That the Workman, Shri Mordhwaj M. Admane was initially appointed as “Security Trainee” vide letter of the Employer dated 12-09-1993 and subsequently appointed as “Security Guard” vide letter dated 12-03-1994 and confirmed in service in the said post w.e.f. 13-09-1994. That the said Workman, Shri Mordhwaj M. Admane was transferred to Leisure Department as “Water Sports Operator” vide letter dated 01-11-1998. That he was again transferred back in Security Department vide letter dated 04-01-2002. That considering his service, he again was re-designated as “Head Guard” vide letter dated 01-07-2004. That he was again transferred to water sports section of Leisure Department as “Water Sports Operator” vide its letter dated 18-11-2004 and kept on probation till 17-05-2005 with a condition that his services may be reverted back to his original position, since then he was working in the said Department till the date of illegal retrenchment. That the Workman, Shri Shekar G. Naik was initially appointed as “Trainee Resort Attendant” in House Keeping Department w.e.f. 09-01-1994 for six months and continued to work in the House Keeping Department till 30-11-1995. That he was appointed as “Helper” in Health and Fitness Department and thereafter he was appointed as “Boat Club Attendant” in the Leisure Department of the Employer w.e.f. 01-12-1995 and confirmed in the said post w.e.f. 01-06-1996. That he was re-designated as “Water Sports Operator” with immediate effect vide letter dated 13-11-1998. That the Workman, Shri Rajan Kotharkar was initially appointed as “Security Trainee” vide letter dated 20-12-1993 for period of three months and appointed as “Security Guard” vide letter of the Employer dated 02-08-1993 and subsequently confirmed in the said post w.e.f. 02-05-1994. That he was trans-

ferred to Leisure Department as "Water Sports Operator" vide letter dated 01-11-1998 and was working in the said post till the date of his illegal retrenchment. That the Workman, Shri Mosses A. Sermalai was initially appointed as "Security Guard" vide letter of the Employer dated 09-09-1993 and confirmed in the said post w.e.f. 09-03-1994. That he was transferred to Leisure Department as "Water Sports Operator" vide letter dated 01-11-1998 and was working in the said post till the date of his illegal retrenchment.

3. That the Employer has employed more than 500 workers and hence covered under Chapter V-B of the I. D. Act, 1947. The Union submitted that no permission has been obtained from the appropriate authority before termination of services of the Workmen under reference. The Union submitted that no Seniority List was displayed before termination of services of the Workmen under reference. The Union submitted that the Junior Workers were working in the Hotel at the time of termination of their services. The Union submitted that before the termination of services of the Workmen under reference neither enquiry has been conducted nor complied with the principal of natural justice. The Union contended that after termination of services of the Workmen under reference, the Employer has employed new Workmen in their place. The Union contended that as all the Workmen under reference have joined the Union, their services have been terminated only to victimize them. The Union contended that the Employer was performing 15 types of water sports activities and was having 5 motorized boats with several adventures and equipments. The Union contended that presently the said boats are being operated through contractor namely, M/s. Goa Coastal Water Sports Pvt. Ltd. by employing new workers. That the Employer has even maintained water sports counter. The Union contended that the action of the Employer in terminating the services of all the Workmen under reference and allotting the said work to contractor is illegal, unjustified and bad-in-law and hence they are entitled for reinstatement with full back wages and continuity in service. The Union submitted that all the Workmen under reference are unemployed and could not succeed in getting any job till date from the date of their termination of service and are undergoing hardship due to unemployment. The Union therefore prayed that the retrenchment of all the six Workmen under reference be declared as illegal, improper and unjustified and directs the Employer to reinstate them in its service with full back wages and continuity in service.

4. The Employer objected the aforesaid claim of the Union by filing its written statement on 13-08-2007 at Exb. 7. The Employer by way of preliminary objection submitted that the entire reference is bad-in-law and not maintainable. The Employer stated that all the six Workmen in the present reference were working alongwith Sr. Boat Club Supervisor in the water sports section of its Leisure Department. The Employer submitted that it has observed that the running of the said section was found to be uneconomical and hence closed the said section w.e.f. 07-05-2005. The Employer submitted that before closing the said section, it has informed the Secretary (Labour), Government of Goa and submitted the notice in Form "P" for closing the said section. The Employer stated that a copy of the said notice was also given to the Labour Commissioner as well as Deputy Labour Commissioner. The Employer submitted that in view of the closure of the said section, the services of the aforesaid Workmen in the said section were found to be surplus; hence the services of the said Workmen working in the said section were dispensed with, after complying Section 25-F of the Industrial Disputes Act, 1947. The Employer submitted that it is not a Factory under the Factories Act, but a commercial establishment registered under the Shops and Establishment Act and hence the Chapter V-B of the Industrial Disputes Act, 1947 is not applicable to it. The Employer submitted that it has every right and prerogative to commence/close any business or any part or section of it at any time. The Employer submitted that while closing the said section, it has complied with all the requirement of the provisions of law. The Employer submitted that it is not an industrial establishment as defined under Chapter V-B of the Industrial Disputes Act, 1947. The Employer stated that there is a recognized Union of its workers by name 'the Leela Beach Employees Union'. The Employer stated that since the Workman, Shri Mudkappa H. Gulabal vide his application dated 29-10-2004 requested for his transfer to the Water Sports Department, he was transferred to the said section vide its letter dated 18-11-2004. The Employer stated that since the entire water sports section has been closed, the question of preparing and/or displaying any Seniority List before termination does not arise. The Employer stated that it has not terminated the services of all the Workmen under reference on account of their misconduct or has not put any stigma on them while terminating their services and hence the question of conducting any enquiry does not arise. The Employer submitted that it has followed the principles of natural justice and

fair play as well as fully complied with all the provisions of law and formalities required to be completed while terminating the services of all the Workmen under reference. The Employer denied that all the Workmen in the present reference are unemployed after termination of their services or that they could not succeed in getting any job till date and undergoing hardship due to unemployment as alleged. The Employer denied the overall case of the Workmen as pleaded by the Union and prayed for dismissal of the present claim filed by the Union.

5. The Union thereafter filed its rejoinder on 10-09-2007 at Exb. 8. The Union by way of its rejoinder submitted that the termination of the services of all the Workmen under reference by the Employer amounts to victimization and implementation of unfair labour practice. The Union stated that the Employer has artificially closed the said water sports section, but the said Department is still in operation and the boats are still registered in the name of the Employer. The Union stated that the water sports section is still functioning with the help of contractor.

6. Based on the pleadings filed by the respective parties, the Hon'ble Industrial Tribunal has framed the issues at Sr. Nos. 2 to 6. The issue No. 1 was framed vide order of this Court dated 22-09-2008 disposing off an application dated 07-08-2008 filed by the Employer to that effect.

1. Whether the Party II proves that the closure of the water sports section/department is legal and justified?
2. Whether the Party I proves that Chapter V-B of the Industrial Act, 1947 is applicable to the Party II?
3. Whether the reference is maintainable?
4. Whether termination of services of Party I/Workmen by Party II is legal and justified?
5. To what relief the Party I/Workmen are entitled?
6. What Award?

7. My answers to the aforesaid issues are as under:

- | | |
|------------------|-----------------------|
| Issue No. 1. | : In the negative. |
| Issue No. 2 | : In the negative. |
| Issue No. 3 | : In the affirmative. |
| Issue No. 4 | : In the negative. |
| Issues No. 5 & 6 | : As per final order. |

Reasons

Issues No. 1 & 3:

I am deciding the issues No. 1 & 3 simultaneously as both the said issues are co-related to each other.

I have heard the oral argument of the Ld. Advocates appearing for the respective parties.

8. Ld. Adv. Shri S. Gaonkar, representing the Union during the course of his oral arguments submitted that though the Employer terminated the services of the Workmen in the present Order of Reference by contending that it has closed its water sports section permanently, infact the said water sports section is being run over through a private contractor. He submitted that it has produced on record five receipts (Exb. W/9-Colly) issued by the water sports section of the Employer. He submitted that the Employer also produced on record a sample bill alongwith vouchers of payments made towards the water sport activities (Exb. E/3-Colly). The said receipts of payment towards water sports activities as well as sample bill (Exb. E/3-Colly) produced on record by the Employer clearly established that the water sports section of the Employer is still in operation and has not been closed permanently. He submitted that the alleged closure of water sports section of the Employer Hotel is therefore artificial and bad-in-law.

9. On the contrary, Ld. Adv. Shri M. S. Bandodkar during the course of his oral arguments submitted that the Employer has examined its Personnel Manager, Shri Sharad Chodnekar to prove its contention that it has closed its water sports section of Leisure Department. He submitted that the said witness of the Employer in its oral evidence on record clearly deposed that the Employer has closed its water sports section permanently w.e.f. 07-05-2005. He submitted that the oral evidence of the Employer's said witness on record further established that the Employer had informed the Secretary (Labour), Govt. of Goa about the closure of the said department and also submitted the notice in Form-"P" and narrated the reasons for the closure of the said water sports section in the said notice and a copy of the said notice was also submitted to the Labour Commissioner as well as Deputy Labour Commissioner. He submitted that the closure of the water sports section of Leisure Department of the Employer Hotel is therefore just proper and legal.

I have carefully perused the entire records of the present case. I have also carefully considered

the various legal submissions made by the Ld. Advocates appearing for the respective parties.

10. Admittedly, the present order of reference has been issued by the Govt. of Goa for its adjudication to the Labour Court-II in exercise of its discretionary powers conferred under Sec. 10 (1) (c) of the I. D. Act, 1947. It is therefore necessary to refer the said provisions of Sec. 10 (1) (c) of the I. D. Act, 1947 as the Employer by way of preliminary objections challenges the very jurisdiction of this Labour Court-II to adjudicate the present order of reference issued by the Government of Goa by contending that the reference is not maintainable.

Sec. 10 (1) (c) of the I. D. Act, 1947 reads as under:

- a) xxxxx
- b) xxxxxx
- c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- d) xxxxxx

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 Workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under Clause (c).

11. Thus, the proviso to Sec. 10 (1) (c) of the I. D. Act, 1947 empowered the appropriate Govt. to refer any dispute to the Labour Court which relates to any matter specified in the Third Schedule and is not likely to affect more than 100 Workmen. In the case in hand, admittedly, the appropriate Government is State Government i.e. Government of Goa and the dispute pertains to the closure and retrenchment of six Workmen of the Employer is related to matter specified in the Third Schedule of the I. D. Act, 1947, which is exclusively triable by the Industrial Tribunal constituted u/s 7-A of the I. D. Act, 1947. Since, the dispute under reference is not likely to be affected more than six persons i.e. six Workmen of the Employer whose services have been terminated, the appropriate Government i.e. Government of Goa can validly refer the present dispute to the Labour Court-II in its discretionary powers vested under proviso to Sec. 10 (1) (c) of the I. D. Act, 1947. Hence the contention of the Employer that the present dispute referred by the Government of Goa is not maintainable is without any merits.

12. The Employer contended that it has closed its water sports section permanently. The term "Closure" has been defined u/s 2 (cc) of the I. D. Act, 1947 and it means the permanent closing down of a place of employment or part thereof. Thus, the permanent closure of the part of the industry is permissible in law. In the case in hand, the Employer contended that it has closed its water sports section of the Leisure Department permanently by following the necessary required formalities.

13. Sec. 25-FFA of the I. D. Act, 1947 provides for the procedure to be followed by any undertaking before its actual closure became effective. Similarly, Sec. 25-FFF of the I. D. Act, 1947 provides for payment of compensation to the Workman in case of closing down of an undertaking. Since the Sec. 25-FFA of the I. D. Act, 1947 lays down the procedure to be followed by an undertaking who intends to close down, it is necessary to refer the said Section 25-FFA of the I. D. Act, 1947.

Sec. 25-FFA:

- (1) An Employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this Section shall apply to-

- (a) An undertaking in which-
 - (i) Less than fifty Workmen are employed, or
 - (ii) Less than fifty Workmen were employed on an average per working day in the preceding twelve months,
 - (b) An undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the Employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

14. Thus, the precondition to close down any undertaking or any part thereof as per provisions of Sec. 25-FFA is that one has to serve a notice in prescribed manner on the Appropriate Government stating clearly the reasons for the intended closure of the undertaking at least sixty days prior to the actual closure of the undertaking or if the Appropriate Government is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the Employer or the like, it is necessary so to do, by order directs the provisions of sub-sec. (1) shall not apply in relation to such undertaking for such period as may be specified in the said order. Further, the Employer has to comply Sec. 25-FFF of the I. D. Act, 1947. Sec. 25-FFF of the I. D. Act, 1947 provides for payment of compensation in accordance with the provisions of Sec. 25-F of the said Act as if the Workman has been retrenched.

15. In the case in hand, the Employer is a Company registered under Companies Act, 1960, involved in the business of residential hotel. Though the Employer's Witness Shri Sharad Chodnekar in his oral evidence on record stated that the Employer has permanently closed its water sports section of the Leisure Department w.e.f. 07-05-2005 by issuing a notice in Form "P" to the Secretary, Labour, Government of Goa, narrating the reasons for the intended closure of the said water sports section of its Leisure Department and a copy of the same was also forwarded to the Labour Commissioner and Deputy Labour Commissioner, the Employer has, however, failed to produce on record any cogent evidence in the form of documents such as resolution if any to close down the said water sports section, notice served on the Appropriate Government etc. Hence in the absence of any cogent evidence on record, an adverse inference is drawn against the Employer and it is held that the Employer has failed to prove that it has closed its water sports section permanently after complying with the necessary formalities which includes the compliance of provisions of Sec. 25-FFA of the I. D. Act, 1947. However, non-compliance of the provisions of Sec. 25-FFA of the I. D. Act, 1947 does not make the closure illegal or non-est, I am supported by a decision of Hon'ble High Court of Bombay in the case of **Poonvasi and Ors. v/s Crown Silk Weaving Industries Ltd. and Anr.** reported in **1994 (1) Mh. L. J. 847**, wherein the Hon'ble High Court of Bombay has held that "*mere contravention of Sec. 25-FFA of the I. D. Act, 1947 by the Employer would not render the closure of an undertaking illegal or void. Non-compliance with the requirement of this Section therefore can-*

not be equated with non-fulfillment of a condition precedent to the passing of an order."

17. The said witness of the Employer, Shri Sharad Chodnekar further deposed that whenever any guest desires to use water sports facilities, it directs the resort guest to approach the said water sport agency which is an independent undertaking. He deposed that since the said independent agencies use its jetty, a certain percentage of amounts charged are received from the independent operators as commissions and it issues the bill under its name in order to ensure that it gets its agreed share of commission. In support of his oral contention, he Produced on record a sample bill issued to the guest (Exb. E/3-Colly). He deposed that the Employer is making such types of bills. The aforesaid oral evidence adduced by the Employer on record implies that the Employer had entered into an agreement with the said independent water sports agencies/operator. The Employer has however failed to produce on record any cogent evidence such as an agreement allegedly entered between itself and the independent water sports agencies/operators or any cogent evidence in support of his oral evidence, though it is denied by the Union during the course of cross-examination of the Employer's witness. The mere fact that the Employer is issuing the bills in its own name prima facie indicates that the Employer is running the said water sports activities independently with or without the help of any water sports agencies/operators. The sample bill which is on record at Exb. E/3-Colly indicates that the said bill was issued by the Employer to its Hotel Resident Guests and the Employer has charged fees of ₹ 1,800/- towards water sports and also issued to him a receipt of the same. The Employer has however failed to produce on record any evidence to show that the said amount charged in its name towards the water sports activities has been handed over to the said independent water sports agencies/operator by retaining its agreed commission, with whom it has allegedly entered into an agreement. The said witness of the Employer, Shri Sharad Chodnekar during his cross-examination deposed that he is not aware as to whether the Employer had taken or initiated any action against the person/persons for having used its name on voucher at Exb. W/9-Colly. The aforesaid statement implies that the Employer has not initiated or taken any action against the said person/persons who has prepared the said bills at Exb. W/9-Colly in the name of the Employer Hotel.

18. On the contrary, Shri P. Gaonkar, the General Secretary of the Union in his oral evidence on record stated that the water sports section of the Employer Hotel is functioning fully with the help of contract Labour and produced on record five receipts of payment of cash towards the water sports activities to the Employer Hotel out of which three are dated 30-12-2008 and two are dated 13-01-2009. The said receipts on record at Exb. W/9-Colly are in the name of the Employer Hotel. On careful perusal of the said receipts at Exb. W/9-Colly it appears that it has been issued to the non-resident guests of the Employer Hotel for utilizing the water sports activities.

19. Thus, the Employer, having failed to produce on record any cogent evidence in the form of documents in support of its oral evidence such as resolution to close down its water sports section that it has permanently closed its water sports section, notice in the prescribed form "P" to the appropriate Government and an agreement which alleged to have been entered with the private independent agencies etc., also failed to prove that it has permanently closed its water sports section by undergoing necessary required procedural formalities and also stopped the operation of water sports activities. Therefore, the contention of the Employer that it has closed its water sports section permanently is without any basis and hence unbelievable. Merely because the Union cannot name any person/s that have been allegedly recruited by the Employer in place of the Workmen under reference, does not mean that the Employer has closed its water sports activities or closed its water sports section. Hence it is held that the closure of the water sports section of Leisure Department of the Employer Hotel is sham and bogus. It is therefore held that the Employer has failed to prove that the closure of its water sports section of Leisure Department is legal and justified. It is further held that the reference is maintainable. Hence, the issue No. 1 is answered in the negative and the issue No. 3 is answered in the affirmative.

Issue No. 2:

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties. I have also carefully perused the entire records of the present case. I have also carefully considered the various legal submissions made by the Ld. Advocates for the respective parties.

20. Admittedly an Employer is a residential hotel, employs several employees to run, administer and manage its Hotel business.

The term "Industrial Establishment" for the purpose of Chapter V-B of the Industrial Disputes Act, 1947 has been defined under Section 25-L and it means.

(a) industrial establishment means—

- (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); or
- (iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951 (69 of 1951).

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of Section 2—

- (i) in relation to any company in which not less than 51 percent of the paid-up share capital is held by the Central Government; or
- (ii) in relation to any corporation [not being a corporation referred to in sub-clause (i) of clause (a) of Section 2] established by or under any law made by Parliament,

The central Government shall be the appropriate Government.

21. Thus, the definition of term "Industrial Establishment" is inclusive and it means a factory as defined under the Factories Act, 1948, a mine as defined under the Mines Act, 1952 and a Plantation as defined under the Plantations Labour Act, 1951 and it does not include a residential hotel, though it is an industry.

22. In the case of **Welcome Group Searock v/s Searock Hotel Employees Union and Anr.** reported in **2005 (4) All M. R. 74**, it has been held by the Hon'ble High Court of Bombay that "*definition of expression "factory" in Sec. 2 (m) of the Factories Act, specifically exclude a hotel and therefore the petitioner establishment is not an industrial establishment as defined u/s 25-L of the Act for the purpose of the Chapter V-B of the Act*".

23. In another case of **Lal Bavta Hotel Aur Bakery Mazdoor Union v/s Ritz Pvt. Ltd. and Anr.** reported in **2007 1 CLR 907** the division bench of Hon'ble High Court of Bombay has held that "*a Respondent being a hotel is excluded that from the definition of Factory and as such would not be an Industrial Establishment for Chapter V-B of the Industrial Disputes Act, 1947.*"

24. Thus, it is now almost settled principle of Industrial Jurisprudence that a "Hotel Establishment" is not an Industrial Establishment for the purpose of Chapter V-B of the Industrial Disputes Act, 1947. Hence I do not find any merits in the submissions of Ld. Adv. Shri S. Gaonkar for the Workmen that the Chapter V-B of the Industrial Disputes Act, 1947 is applicable to the Employer Hotel. Hence it is held that the Employer being hotel establishment is not an "Industrial Establishment" for the purpose of Chapter V-B of the Industrial Disputes Act, 1947 and Chapter V-B of the Industrial Disputes Act, 1947 is not applicable to the Employer Hotel. The Issue No. 2 is therefore answered in the negative.

Issue No. 4:

I have heard the oral argument of the Ld. Advocates appearing for the respective parties.

25. While deciding the Issue No. 3 hereinabove, I have come to the conclusion and held that the closure of the water sports section of Leisure Department is sham and bogus. Therefore, any action taken on the basis of alleged closure of the said water sports section of the Employer Hotel is also illegal and bad-in-law.

26. In the case in hand, except the Workman, Shri Shekhar Naik all other Workmen were designated as "Security Guard" and thereafter they were transferred to water sports section of the Leisure Department of the Employer Hotel, somewhere in the month of November, 1998. The Workman, Shri Shekhar Naik was appointed as "Boat Club Attendant" in Leisure Department w.e.f. 01-12-1995 and confirmed in the said post w.e.f. 01-06-1996. He was designated as "Water Sports Operator" w.e.f. 13-11-1998. The evidence on record indicates that all the Workmen were working as "Water Sports Operator" till the date of their termination of services w.e.f. 07-05-2005. The transfer letters of all the Workmen under reference on record at Exb. W/4-Colly indicates that all the Workmen, under reference who were working as "Security Guard" in Grade II on a monthly salary of ₹ 1,030/- were transferred in water sports section of Leisure Department and re-designated as "Water Sports Operator" in Grade IV and were paid monthly salary of ₹ 2,400/- plus VDA per month. Thus, the transfer of all the Workmen under reference vide transfer letters of the Employer at Exb. W/4-Colly issued to them is not only a transfer, but also a promotion to them. The evidence on record indicates that the Union has failed to produce on record any cogent evidence in support of its oral contention that after the termination of services of

all the Workmen under reference the Employer has recruited new Workmen to work in their place or the junior workers in the same designation are working in the Employer Hotel at the time of termination of their services. Hence, I do not find any merits in the aforesaid submissions of the Union that after the termination of services of all the Workmen under reference the Employer has recruited new Workmen to work in their place or the junior workers in the same designation are working in the Employer Hotel at the time of termination of their services.

27. The evidence on record indicates that the Employer Hotel has terminated the services of its six Workmen namely, Shri Mudakappa H. Gulabal, Shri Santan P. Rodrigues, Shri Mordhwaj M. Admane, Shri Shekar G. Naik, Shri Rajan G. Kotharkar, Shri Mosses A. Sermalai with effect from 07-05-2005 by way of retrenchment on the ground of alleged permanent closure of operation of its water sports section since the said Section is found to be uneconomical. The Employer's witness, Shri Sharad Chodnekar in his cross-examination stated that the entire water sports department has been closed and therefore the question of preparing the Seniority List of the water sports operator does not arise. The aforesaid statement of the Employer's witness implies that the Employer has not prepared and displayed any Seniority List in the cadre of said "Water Sports Operator" in which post all the Workmen were working at the time of termination of their services.

28. Since the said closure of the water sports section of the Employer Hotel is sham and bogus as well as illegal, the action of the Employer in retrenching the services of its six Workmen namely, Shri Mudakappa H. Gulabal, Shri Santan P. Rodrigues, Shri Mordhwaj M. Admane, Shri Shekar G. Naik, Shri Rajan G. Kotharkar, Shri Mosses A. Sermalai with effect from 07-05-2005 is therefore certainly illegal and unjustified. The Issue No. 4 is therefore answered in the affirmative.

Issue No. 5:

29. While deciding the Issue No. 4 hereinabove, I have come to the conclusion and held that the action of the Employer Hotel in terminating services of its six Workmen is illegal and unjustified.

30. The Hon'ble Supreme Court of India in its case of **Kendriya Vidyalaya Sangathan and Anr v/s S. C. Sharma 2005 (104) FLR 863**. The Hon'ble Apex Court in para-15 of its aforesaid Judgement has ruled as under:

"15. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the Employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

31. The Hon'ble Supreme Court of India in its another case of **Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr.** reported in **2009 III CLR 628** it has been held that *"it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given factual situation even though the termination of an employee in contravention of the prescribed procedure, compensation instead of reinstatement has been held to meet the ends of justice"*.

32. In the case of **M/s. Reetu Marbles v/s Prabhakant Shukla and Anr.**, reported in **2010 (124) FLR 72**, the Hon'ble Supreme Court of India has held that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken up by the Court realizing that an industry may not be compelled to pay to the Workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the Employer would be compelled to go back to a situation which prevailed many years ago, namely, when the Workman was retrenched"*.

33. Thus, the Hon'ble Apex Court in its various series of decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the Workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

34. In the case in hand, the Union has pleaded that since after the date of termination of services of all the Workmen under reference, they are

unemployed. The Union however could examine its General Secretary, Shri P. Gaonkar and two Workmen namely, Shri Mudakappa Gulabal and Shri Shekhar G. Naik to prove the issue of gainful unemployment of the Workmen under reference. The Union has however failed to examine the remaining four Workmen whose cause of termination has been espoused in the present reference to prove their gainful unemployment. The aforesaid witnesses examined by the Union have even failed to state on oath that all or any of the Workmen in the present reference are/is gainfully unemployed for the reason best known to them. Thus, the Union has failed to discharge its initial burden to prove that after termination of services of the Workmen under reference, they are gainfully unemployed. The termination letters of the Employer issued to the Workmen under reference at Exb. W/2-Colly on record indicates that the Workmen under reference namely, Shri Mudakappa H. Gulabal, Shri Shekar G. Naik, Shri Mordhwaj M. Admane, Shri Santan P. Rodrigues, Shri Rajan G. Kotharkar and Shri Mosses A. Sermalai have been paid their legal dues amounting to ₹ 62,208/- ₹ 38,824/-, ₹ 57,247/-, ₹ 38,824/-, ₹ 55,266/- and ₹ 57,247/- respectively includes retrenchment compensation and one month pay in lieu of notice. On the contrary, the Employer has examined Shri Prasad Pednekar, the Assistant Labour Commissioner, Panaji-Goa. The said witness of the Employer in his evidence on record disclosed that all the six Workmen have been paid under the Labour Welfare Scheme of Government of Goa consequent upon filing of their application to that effect. He disclosed that an amount of ₹ 52,000/-, ₹ 40,000/-, ₹ 48,000/-, ₹ 65,000/-, ₹ 40,000/- and ₹ 48,000/- were paid to the Workmen namely, Shri Mudakappa H. Gulabal, Shri Shekar G. Naik, Shri Mosses A. Sermalai, Shri Rajan G. Kotharkar, Shri Santan P. Rodrigues and Shri Mordhwaj M. Admane respectively.

35. Thus, the Union has failed to produce on record any material evidence to prove that the Workmen under reference are gainfully unemployed after the termination of their services w.e.f. 07-05-2005, and hence they are entitled to a relief of reinstatement alongwith full back wages. Since, neither the Union nor any of the Workmen under reference have stated on oath that they are gainfully unemployed, it presumed that all the Workmen under reference are gainfully employed and hence they are not entitled to relief of reinstatement alongwith full back wages. Taking into consideration the compensation paid to all the six Workmen under reference by the Govt. of Goa

length of service with the Employer, their age, educational qualifications, nature of employment and like factors etc. in my considered view, a compensation of ₹ 70,000/- (Rupees seventy thousand only) to each of the Workmen would meet the ends of justice.

In view of the above discussion and with regards to the facts and circumstances of the case, I proceed ahead to adjudicate the reference as under:

ORDER

1. It is held that the action of the Management of M/s. Hotel Leela Venture Ltd., The Leela Goa, Cavelossim-Goa, in terminating the services of its six Workmen, namely, 1) Shri Mudkappa H. Gulabal, 2) Santan P. Rodrigues, 3) Mordhwaj M. Admane, 4) Shekar G. Naik, 5) Rajan G. Kotharkar, 6) Mosses A. Sermalai, with effect from 07-05-2005, is illegal and unjustified.

2. The Management of M/s. Hotel Leela Venture Ltd., the Leela Goa, Cavelossim-Goa is hereby directed to pay to all the six Workmen, namely, 1) Shri Mudkappa H. Gulabal, 2) Santan P. Rodrigues, 3) Mordhwaj M. Admane, 4) Shekar G. Naik, 5) Rajan G. Kotharkar, 6) Mosses A. Sermalai a sum of ₹ 70,000/- (Rupees seventy thousand only) each as monetary compensation.

3. No order as to costs.

4. Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Mines

Directorate of Mines & Geology

Order

No. 01/668/11-Mines/3232

Whereas Directorate of Mines & Geology, Government of Goa has been contemplating to put in place an Integrated GIS based Mining Tenement System (IGISMTS) which is automated IT enabled system for regulating mining, promoting sustainable mining in Goa, monitoring extraction and ensuring optimal revenue collection through mining activity.

Whereas Government approached the Apex Association of Mining of Goa namely, Goa Mineral

Ore Exporters' Association, Goa, India (GMOEA) to put a system for regulating mining activities for asserting a qualified vendor.

Whereas the (GMOEA) expressed their inability to undertake such an activity for want of requisite expertise being available with them and instead requested the Government to take up the project which shall be funded by the lease holders.

Whereas the Hon'ble High Court of Bombay at Goa, in W. P. No. 34/11 filed by M/s. Goa Foundation is examining the steps taken by Goa Government for regulating & monitoring the export of Iron Ore from the State. The State Government has submitted before the Hon'ble High Court that the State is in the process of installing an electronic monitoring system viz. Radio Frequency Identification (RFID) and Near Field Communication (NFC) System for monitoring mineral ore transportation. The State Government has further submitted before the Hon'ble High Court that such a system shall be put in place by 01-03-2012.

Whereas Under Section 23C of the MMDR Act, 1957 the State Government is empowered to frame rules for preventing illegal mining transportation and storage of minerals and for the purposes connected therewith. Such rules may provide for all or any of the following matters namely:

- (a) Establishment of check posts for checking of minerals under transit;
- (b) Establishment of weigh-bridges to measure the quantity of mineral being transported;
- (c) Regulation of mineral being transported from the area granted under a mining lease;
- (d) Inspection, checking and search of minerals at the place of excavation or storage or during transit;
- (e) Any other matter which is required to be or may be prescribed for the purpose of regulating mining and transportation and storage of minerals.

Whereas Ministry of Mines, Govt. of India have been insisting for putting in place automated mine management system and has also recommended qualified vendor for this purpose.

Whereas Under Rule 27(3) the Mineral Concession Rules, 1960, the State Government may, at the instance of the Central Government impose such conditions as may be necessary in the interest of mineral development.

Whereas the Government of Goa in order to regulate mining activity, promote sustainable

mining as also to ensure compliance of the Order of the Hon'ble High Court and upon on the advice of the Ministry of Mines, Govt. of India in this regard directed Info Tech Corporation of Goa, hereinafter referred to as the ITG and the Department of Information Technology to undertake the project of automation and put in place an e-enabled mining management system in consultation with the Directorate of Mines & Geology.

Whereas Info Tech Corporation of Goa was advised to select a qualified vendor to execute the project.

Whereas based on a detailed request for proposal the ITG in consultation with the Directorate of Mines called for bids from qualified agencies recommended by the Government of India.

Whereas after detailed scrutiny of the bids received the proposal of M/s. E-Connect Solutions Pvt. Ltd., Udaipur who had quoted a rate of ₹ 34/- per ton for building and operating the system had met the requirement set out by the Government was recommended by the ITG to the Government for acceptance and appointment, as preferred vendor for execution of the aforesaid project.

Whereas the Government after examining the proposal received from the IT Department & ITG, accepted the recommendation and approved the proposal to appoint M/s. E-Connect Solutions Pvt. Ltd. to undertake the project on a Build, Own and Operate basis at the rate quoted by them, for a period of five years which can be extended further at such terms and conditions as Government may decide.

Whereas, it was also decided by the Government that the payment for the project would be recovered as "IT Infrastructure User Fee", hereinafter referred to as 'User Charges' from the lease holders in advance on quarterly basis based on the returns of production for the financial year 2010-11, filed by them with the Government.

Whereas it was also decided that the said advance payment shall be deposited in an Escrow Account which should be opened and operated by ITG in consultation with Directorate of Mines & Geology and necessary reconciliation of advance fee collected and actual user charges based on figures of production reported by the lease holders during the year shall be carried out at the end of every financial year by the Directorate of Mines & Geology and in case of any surplus lying in the Account the same shall be adjusted against the

future payment and in case there is any deficit the same shall become payable alongwith quarterly advance towards user fee for ensuing period.

Whereas, it was also decided that all the Lease Holders and through them Jetty Owners, intermediate points and transporters whose services are utilised by the Lease Holders shall be directed to extend necessary co-operation for putting in place the mining management system referred to above.

Now Therefore, in view of the circumstances explained above as also in light of the provisions contained in Section 23 C of the MMDR Act, 1957 and Rule 27 (3) of the Mineral Concession Rules, 1960, the Government of Goa with a view to regulate mining activity in Goa, to check the illegal mining, to protect the revenue recoverable from mining activity, to promote sustainable mining besides ensuring compliance of various conditions imposed in the lease deed as also in the environmental clearances issued by the Competent Authority orders that:

- (a) A state of the art I.T. based modern mine management system as per RFP shall be put in place by the preferred vendor selected by the Government to cover all working mining lease holders;
- (b) The IT infrastructure user fee/charges for the system shall be payable by the working mining lease holders @ ₹ 34/- per ton;
- (c) The charges shall be payable in advance on quarterly basis based on production figures of ore reported by the lease holders for the year 2010-11;
- (d) For the first time an adjustable advance payment of user charges on the basis of half of the production of the ore reported for the year 2010-11 shall be payable by the lease holders in the Escrow Account referred to above by 31st March, 2012.
- (e) Out of the payment of 50% of the Annual Production of ore for financial year 2010-11, as user charges, 25% of which shall be adjusted against the user charges payable by the lease holders for the use of infrastructure and any debit or credit shall be reconciled at the end of the financial year after the detailed scrutiny of the actual use of the system and the charges payable thereon computed at the rate prescribed based on actual production of the ore reported during the year. In case of excess receipt if any, it shall be adjusted against future payment and in case of deficiency the same shall be

payable alongwith quarterly advance payment of the user fee. The balance of payment shall be adjusted at the end of the contract period.

- (f) All the lease holders, jetty owners and all the transporters engaged by the lease holders shall extend necessary co-operation in setting up the system including making available the information that may be essential for setting up of the system and if necessary provide adequate space for putting in place various equipments that may be required to be installed and also facilitate power supply on payment for operating the system wherever necessary;
- (g) Directions in the order contained herein shall be deemed to be part of the condition on which permission for mining has been granted by the State Government including the lease deed under which such mining is being carried out;
- (h) Non-compliance of the directions of the order contained herein or non-payment of user fee as prescribed herein shall result in non-issuance of NOC for export, stoppage of mining activities, initiation of cancellation of permission including cancellation of lease and any other action that the department may think fit.
- (i) A third party qualified agency shall be appointed by the Directorate of Mines & Geology for effective monitoring, implementation and execution and operation of the system that is being set up;
- (j) Payment for such audit shall be recovered from the lease holder in proportion to their share in total production/sale/export of the ore reported during the year;
- (k) In order to promote sustainable mining in the State of Goa, the Directorate of Mines through qualified agencies of international repute undertake the audit of (a) the royalty received in the last five years so far from the lease holders and reconcile the same with the EC limit prescribed, limit of export permitted, actual extraction etc. carried out by the lease holders from the approved mining site to ensure recovery royalty and dues;
- (b) ensure compliance of various conditions imposed in the lease deed;
- (c) compliance of condition imposed in environmental clearances and other clearances granted by the government

including condition relating to rehabilitation of the mining site;

- (l) The payment for such audits as referred to above shall be made by the lease holder in proportion to their share in the total production/export/sale reported from the mining activity during the year;
- (m) The lease holders shall ensure that necessary user charges as stipulated in the order is deposited in the Escrow Account to be operated by ITG and DMG and sufficient funds are available to adjust the charges towards the payment of user charges. Any failure shall result in temporary suspension of mining activity including non-issue of NOCs, for export besides any other action that may be deemed fit as per the conditions contained in the order.
- (n) The Government reserves the right to amend the conditions contained hereinafter considering the views of the lease holders;
- (o) The system shall be set up under the supervision of ITG and Directorate of Mines & Geology.
- (p) Shri Deepak Bandekar, Assistant Director of Directorate of Mines & Geology shall be the Nodal Officer for implementation of the project.

By order and in the name of the Governor of Goa.

R. K. Verma (IAs), Principal Secretary (Mines).

Panaji, 29th February, 2012.



Department of Personnel

Order

File No. 6/5/2011-PER

Shri Ajit S. Pawaskar, Under Secretary (GA-II) and holding additional charge of the post of Under Secretary, Finance (R&C) shall also officiate as Officer on Special Duty to Hon. Chief Minister, in addition to his own duties, with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 14th March, 2012.

Order

File No. 6/5/2011-PER (a)

The Governor of Goa is pleased to order transfer and posting of Shri Michael M. D'Souza, Selection Grade Officer of Goa Civil Service as Joint Secretary to Hon. Chief Minister, with immediate effect, in public interest.

Shri D'Souza shall hold charge of the post of Director, Science, Technology & Environment, Additional Secretary (Finance) and Member Secretary, Goa Energy Development Corporation, in addition to his own duties, until further orders.

The posting of Shri D'Souza shall be on deputation and shall be governed by standard terms of deputation as contained in Office Memorandum No. 13/4/74-PER dated 12-02-1999, and as amended.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 14th March, 2012.

Order

File No. 6/5/2011-PER (b)

The Governor of Goa is pleased to order transfer and posting of Shri Prasad V. Lolayekar, Selection Grade Officer of Goa Civil Service as Officer on Special Duty to Hon. Chief Minister, with immediate effect, in public interest.

Shri Lolayekar shall hold charge of the post of Director, Art & Culture, in addition to his own duties, until further orders.

The posting of Shri Lolayekar shall be on deputation and shall be governed by standard terms of deputation as contained in Office Memorandum No. 13/4/74-PER dated 12-02-1999, and as amended.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 14th March, 2012.

Order

File No. 6/5/2011-PER

Shri Prasanna A. Acharya, Additional Collector-I, South, Margao shall also officiate as Officer on Special Duty to the Id. Advocate General, in addition to his own duties, with immediate effect and until further orders.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 15th March, 2012.

Order

File No. 6/1/2005-PER/Part

Shri Menino D'Souza, Director of Panchayats and holding additional charge of the post of Director of Social Welfare, shall also hold charge of the post of Project Director, District Rural Development Agency, South, Margao and Project Director, District Rural Development Agency, North, in addition to his own duties, with immediate effect and until further orders.

Consequently, Shri K. V. Signapurker, Project Director, District Rural Development Agency, South, Margao and holding additional charge of Project Director, District Rural Development Agency, North, shall report to Personnel Department for further posting, immediately, without availing Joining Time. He shall draw his salary on the 'Leave & Training Reserve' post, during the period of awaiting posting.

By order and in the name of the Governor of Goa.

Umeshchandra L. Joshi, Under Secretary (Personnel-I).

Porvorim, 19th March, 2012.

Department of Printing & Stationery
Government Printing Press

Order

No. 8/15/93-P & S

On recommendation of Goa Public Service Commission vide their letter No. COM/II/39(1)/2011/

/356 dated 24-1-2012, the Government of Goa, is pleased to promote Shri Gurudas K. Chari, Overseer (Maintenance), Govt. Printing Press on regular basis to the post of Dy. Director (Technical) (Group 'B' Gazetted) in the pay scale of PB—2, ₹ 9,300-34,800+ Grade Pay ₹ 4,600/- with immediate effect.

He shall be on probation for a period of two years or the date of superannuation whichever is earlier.

By order and in the name of the Governor of Goa.

N. D. Agrawal, Director & ex officio Additional Secretary (Printing & Stationery).

Panaji, 19th March, 2012.

Department of Public Health

Order

No. 7/3/92-I/PHD

Read: Order No. 7/3/92-I/PHD dated 04-07-2011.

Government is pleased to extend the term of ad hoc appointment of Smt. Medha Dessai to the post of Assistant Drugs Controller in the Directorate of Food & Drugs Administration (Group 'A' Gazetted), in the pay scale of PB—3, ₹ 15,600-39,100+Grade Pay ₹ 5,400/- for a further period of six months from 04-01-2012 to 03-06-2012 or till the post is filled on regular basis whichever is earlier.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 22nd February, 2012.

Order

No. 21/2/2010-I/PHD

Sanction of the Government is hereby accorded for counting of the past services rendered by Smt. Ana Maria J. Vaz E. Braganza, Lecturer in Paediatric Nursing, Institute of Nursing Education, Bambolim as a Staff Nurse at Goa Medical College from 07-11-1991 to 21-04-2010 as qualifying services for the purpose of pensionary benefits only as admissible under Rule 26(2) of CCS (Pension) Rule, 1972, subject to the condition that the terminal benefits, if any obtained by her should be

deposited in the Goa Government treasury alongwith interest.

This issues with the concurrence of the Finance (Rev. & Cont.) Deptt. vide U.O. No. 1419871 dated 28-02-2012.

By order and in the name of the Governor of Goa.

Paula Fernandes, Under Secretary (Health-II).

Porvorim, 7th March, 2012.

Order

No. 4/3/2005-II/PHD/Vol.I

Government is pleased to extend the term of ad hoc promotion of Dr. Nilam Madhale, Assistant Lecturer in Anatomy against the post of Lecturer in Anatomy in Goa Medical College, Bambolim in the pay scale of Pay Band—3, ₹ 15,600-39,100 with Grade Pay of ₹ 6,600/- and other allowances, for the period w.e.f. 01-07-2011 to 12-07-2011.

Dr. Nilam Madhale has been promoted to the post of Lecturer in Anatomy on regular basis w.e.f. 13-07-2011 in the same pay scale vide Order No. 4/1/2003-II/PHD/PF.II dated 12-07-2011.

This issues with the approval of the Goa Public Service Commission vide their letter No. COM/II/3/ /30(1)/2011/1955 dated 09-02-2012.

By order and in the name of the Governor of Goa.

B. S. Kudalkar, Under Secretary (Health).

Porvorim, 14th March, 2012.

Department of Revenue

Order

No. 22/12/2011-RD

Whereas, the Government of Goa, vide Notification No. 22/12/2010-RD dated 16-08-2010, issued under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act"), and published in the Official Gazette, Series II No. 22 dated 26-08-2010, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land

Acquisition for expansion of Industrial Estate at Tuem of Pernem Taluka (hereinafter referred to as the "said public purpose");

And Whereas, the Government of Goa considered the report made by the Collector under sub-section (2) of Section 5A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 22/12/2010-RD dated 06-07-2011, issued under Section 6 of the said Act, and published in the Official Gazette, Series II No. 15 dated 14-07-2011, declared that the said land is required for the said public purpose.

Now, Therefore, in exercise of the powers conferred by Section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, North Goa District, Panaji to take the order for acquisition of the said land.

By order and in the name of the Governor of Goa.

Neela S. Dharwadkar, Under Secretary (Rev-I)/Link.
Porvorim, 17th February, 2012.

Department of Tourism

Order

No. 1/14(141-2)/12-DT/5589

In exercise of the powers conferred under sub-sections (1) & (2) of Section 5 of the Right to Information Act, 2005 (Central Act No. 22 of 2005) hereinafter referred to as the said Act and in Notification of earlier Orders in this regard, Shri Rajesh A. Kale, Assistant Director (Information) is hereby designated as Assistant Public Information Officer (North) of the Department to Tourism with immediate effect.

The designated officer shall exercise and perform the powers/functions laid down under Right to Information Act, 2005 with immediate effect.

By order and in the name of the Governor of Goa.

Swapnil M. Naik, Director of Tourism & Addl. Secretary.

Panaji, 15th February, 2012.

Department of Transport

Directorate of Transport

Order

No. D.Tpt/EST/285-II/PF/2012/997

- Read: 1. Order No. D.Tpt/EST/285-II/(PF)/2011/3836 dated 15-09-2011.
2. Order No. D.Tpt/EST/285-II/(PF)/2011/3838 dated 15-09-2011.
3. Order No. D.Tpt/EST/285-II/(PF)/2011/3862 dated 16-09-2011.

Government is pleased to further extend the ad hoc promotion of the following assistant Directors of Transport, presently working in different Offices as detailed below for further period from 15-01-2012 & 16-01-2012 respectively upto 30-06-2012.

Sr. No.	Name of the Official	present posting
1.	Shri Vinod Arlekar	Asstt. Director of Transport, Canacona-Goa.
2.	Shri Abhay Naik	Asstt. Director of Transport, Quepem-Goa.
3.	Shri Balchandra A. Sawant	Asstt. Director of Transport, (HQ) Panaji-Goa.

By order and in the name of the Governor of Goa.

Arun L. Desai, Director and ex officio Joint Secretary (Tpt).

Panaji, 15th March, 2012.

Notification

No. 5/9/90-Tpt/2012/1004

In exercise of the powers conferred by clause (xii) of sub-rule (1) and Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Vehicle Mahindra Bolero SLE 2WD 7 Seater AC bearing chassis No. MA1PL2GPKC2A62918 and Engine No. GPC4A54838 of model January, 2012 owned by Bardez-Goa, from Society of the Sisters of St. Alex, St. Alex Convent, Calangute, Bardez-Goa from payment of tax due to this State, being a Charitable Institution.

Arun L. Desai, Director and ex officio Joint Secretary (Tpt).

Panaji, 15th March, 2012.

Notification

No. 5/9/90-Tpt/2012/1005

In exercise of the powers conferred by clause (xii) of sub-rule (1) and Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Mahindra Maxximo Minivan BS3 D+7 RED bearing chassis No. MA1FB2MCRB6L51436 and Engine MCB6L29231 of Model November, 2011 owned by Sr. Christobel's Trust, Mother Teresa's Roses, Muddavaddo, Parra, Bardez-Goa 403510 from payment of tax due to this State, being a Charitable Institution.

Arun L. Desai, Director and ex officio Joint Secretary (Tpt).

Panaji, 16th March, 2012.

Notification

No. 5/9/90-Tpt/2012/1039

In exercise of the powers conferred by clause (xii) of sub-rule (1) and Rule 22 of the Goa, Daman and Diu Motor Vehicles Tax Rules, 1974, the Government of Goa hereby exempts New Vehicle GA03/K-9198 of make Trax Cruiser Classic 3050MM bearing chassis No. MC1D4DKA8CP019874 and Engine No. D27055142 owned by Ishaprema Niketan Sangh, Bounta Waddo, Assagao, Bardez-Goa from payment of tax due to this State, being a Charitable Institution.

Arun L. Desai, Director and ex officio Joint Secretary (Tpt).

Panaji, 19th March, 2012.

Department of Printing & Stationery

Government Printing Press

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